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1 UNITED STATES OF AMERICA  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 371 (RA)

5 JOHN GALANIS, et al.,

6 Defendants.

7 -----x

8 New York, N.Y.  
9 June 27, 2018  
9:00 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13  
14 APPEARANCES

15 ROBERT KHUZAMI,  
Acting United States Attorney for the  
16 Southern District of New York  
17 BY: BRENDAN F. QUIGLEY,  
REBECCA G. MERMELSTEIN,  
18 NEGAR TEKEEI,  
Assistant United States Attorneys

19 PELUSO & TOUGER  
Attorneys for Defendant John Galanis  
20 BY: DAVID TOUGER

21 BOIES, SCHILLER & FLEXNER LLP (NYC)  
Attorneys for Defendant Devon Archer  
22 BY: MATTHEW LANE SCHWARTZ  
LAURA HARRIS  
23 CRAIG WENNER

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Appearances (Cont'd)

PAULA J. NOTARI

Attorney for Defendant Bevan Cooney

- and -

O'NEILL and HASSEN

Attorneys for Defendant Bevan Cooney

BY: ABRAHAM JABIR ABEGAZ-HASSEN

Also present: Kendall Jackson, Paralegal  
Ellie Sheinwald, Paralegal  
Eric Wissman, Paralegal  
Special Agent Shannon Bienick, FBI

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(Trial resumed; jury not present)

THE COURT: So, last night I circulated a red lined version of the jury charge and the verdict form I intend to use. I think most of the changes are self explanatory. There are a few I'm going to note for you.

In both the substantive and conspiracy charges I added abbreviated versions of the language Mr. Schwartz had requested regarding defendant's association with individuals of position in a corporate entity not being sufficient to establish knowledge or intent.

Although none of the defense made this precise argument, there has been kind of attack on the government's investigation, so I left in the specific investigative techniques charge.

I left in the conscious avoidance charge. As I previously noted, I think it is appropriate in response, just as an example, to Mr. Touger's objection from yesterday. I want to note that it's also appropriate with respect to John Galanis who received the \$2.35 million for his role in the WLCC bond offerings, which is not a payment authorized by any of the governing documents, although he claims it was a finders fee. At the very least, this is a red flag that should have alerted him to the criminal nature of the scheme.

I added instruction on similar act evidence, as we discussed yesterday. If you have objections to the particular

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1 language, let me know.

2 As for the jury unanimity instruction, I took a closer  
3 look at that, as I said I would yesterday. I don't think it's  
4 required in this case, where the government clearly alleges a  
5 single scheme in the context of a substantive securities fraud  
6 count. This seems to be a situation in which at the very least  
7 these factual allegations are interrelated. So, see for  
8 instance the Schiff case, 801 F.3d at 114 to 115 and Judge  
9 Cote's opinion in the Gonzales case, 2002 WL 77082 at 3 to 4.  
10 So, I think a general unanimity instruction is sufficient here.

11 Do we have all of the exhibits ready to go?

12 MS. NOTARI: Almost.

13 MR. SCHWARTZ: We will have ours this afternoon, which  
14 is when I expect they will be relevant. I forget, how many  
15 copies did we agree upon?

16 THE COURT: I think one copy of each. And the idea I  
17 thought was just to put it all in a trial cart and send them  
18 all back at the same time.

19 MR. SCHWARTZ: Yes.

20 THE COURT: We don't have a lot of recordings in this  
21 case. We have some audio recordings. We have, you know, the  
22 promotional video of 1920 Bel Air. But I don't know if you  
23 need to send a computer back or some device to listen to the  
24 recordings, or if that's not necessary unless they request it.

25 MR. SCHWARTZ: I think you can just add to your

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1 instruction if they want to see any evidence that's not in hard  
2 copy, they can ask for it, and we will display it in the  
3 courtroom for them.

4 MS. MERMELSTEIN: That's fine. One note with respect  
5 to exhibits. We pulled ours together here so that the defense  
6 can take a look at them if they want; they are all in this  
7 cart.

8 With respect to things that were marked as a  
9 Government exhibit and which then in offering -- because the  
10 defense is offering they marked it as a joint exhibit, we don't  
11 have copies of the "joint" exhibit. We only have the  
12 government exhibit. We've included it as a Government exhibit  
13 in the trial cart. It seems fine to me. The numbers are the  
14 same, but I just wanted to make sure that's clear.

15 THE COURT: That's fine. Just make sure you have your  
16 defense exhibit too if you want to have it presented as a  
17 defense exhibit.

18 MR. SCHWARTZ: Look, the truth is I called them joint  
19 exhibits but they were defense exhibits; they were never moved  
20 in by the government. The reason that I called them joint  
21 exhibits was because early on in the trial I didn't know what  
22 the government was going to ultimately move in or not, and I  
23 didn't want there to be confusion on the numbers. So for  
24 things that I was moving in on cross that had been designated  
25 Government's exhibits, I called them joint exhibits so there

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1 wouldn't be confusion. But I don't think there should be a  
2 version of those documents that is called just a government  
3 exhibit, because no such thing was every introduced. We are  
4 printing copies; they are designated as joint exhibits; the  
5 government can look at them all.

6 THE COURT: That's fine, as long as it has the  
7 government sticker on it. All I'm concerned about is if a  
8 juror had taken down a note of what exhibit it was. We want  
9 them to be able to find it.

10 MS. MERMELSTEIN: That's fine.

11 MR. SCHWARTZ: That's fine.

12 MS. MERMELSTEIN: The point wasn't to put in the  
13 government one; it's that in making sure we were doing our  
14 share of the exhibit printing we don't have those.

15 THE COURT: That's fine. So just take those out, show  
16 them to Mr. Schwartz.

17 MS. MERMELSTEIN: And we can swap in the joint ones.

18 THE COURT: Exactly. I just want to make sure we can  
19 do this seamlessly after the charge. I don't expect that I  
20 will finish the charge or maybe even start it before lunch, so  
21 you will have the lunch hour. I may start it but I think we  
22 will see how it goes.

23 MS. MERMELSTEIN: That's fine, your Honor.

24 We have also prepared a sort of sanitized exhibit list  
25 for the jury with respect to the government/joint exhibits.

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1 We're happy to combine it with a defense one, or put in two,  
2 very neutral with respect to the descriptions, things like  
3 to/from e-mail on date, no description. I think it may be  
4 helpful to them in finding things.

5 THE COURT: OK. If you can look at each others and  
6 make sure that's OK as well.

7 MR. SCHWARTZ: We have never discussed this before. I  
8 don't have a problem with it. I wouldn't want there to be a  
9 single list that reflected everything. We can certainly do our  
10 part, which is most of the defense exhibits, if the government  
11 gives it to us now, by lunchtime, I would think. Can you  
12 e-mail it to us?

13 MS. MERMELSTEIN: Sure.

14 THE COURT: OK. I mean I think if someone can work on  
15 it during Ms. Notari's summation, that would be great.

16 MR. SCHWARTZ: Exactly.

17 THE COURT: Just to confirm -- because we have to make  
18 copies of all of the charges, because my practice is to have  
19 all the jurors have a copy of the charge -- do you have any  
20 objections that you have not already lodged?

21 MR. SCHWARTZ: I have you a few comments. I'm not  
22 going to reiterate what was in our original requests to charge  
23 and what discussed the other day. I presume those are all  
24 preserved.

25 THE COURT: They are preserved, yes.

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1 MR. SCHWARTZ: So, I just want to go over a few  
2 things.

3 One, I heard what your Honor said about unanimity.  
4 I'm not going to reargue it. But I do just want the record to  
5 be clear. Yesterday when we talked about this your Honor  
6 handed out a proposed charge. I believe that was a correct  
7 proposed charge, and I just want to read it into the record so  
8 that the record is complete.

9 THE COURT: Sure.

10 MR. SCHWARTZ: And the critical paragraph was this  
11 one: "One more point about the requirement that your verdict  
12 must be unanimous. Count Two of the indictment accuses the  
13 defendants of committing substantive securities fraud in either  
14 one of two different ways: The first relates to misstatements  
15 made to the WLCC; the second is the alleged material omissions  
16 with respect to clients of Hughes and Atlantic.

17 "The government does not have to prove both of these  
18 for you to return a guilty verdict on this charge. Proof  
19 beyond a reasonable doubt of one or the other is enough, but in  
20 order to return a guilty verdict, all 12 of you must agree that  
21 the same one has been proved."

22 And obviously it's our position that that is an  
23 appropriate charge.

24 THE COURT: Understood. As I said, just having taken  
25 a closer look at the law, my view is that that is not necessary



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1 after all. But you've preserved your record, so thank you.

2 MR. SCHWARTZ: Thank you, your Honor.

3 Second, with respect to the conscious avoidance charge  
4 that appears starting on page 50, we discussed this the other  
5 day, and your Honor said you would think about it. I just want  
6 to make sure it didn't get lost.

7 We had discussed -- especially because of the  
8 placement of the conscious avoidance charge, which comes at the  
9 very end and is not with all the other sort of mental state  
10 charges -- the idea that there should be some savings language  
11 at the end, making clear to the jury that conscious avoidance  
12 is not available as a substitute for intent, fraudulent intent  
13 or willfulness.

14 Your Honor has put in the language that it's not a  
15 substitute for active joint conspiracy -- which I think is  
16 appropriate -- but I would also ask for a sentence or two  
17 simply reminding the jury that on the substantive fraud count  
18 they have to find knowledge, willfulness and intent, and  
19 conscious avoidance only relates to knowledge. They have to  
20 separately find fraudulent intent and willfulness, not through  
21 conscious avoidance.

22 MS. TEKEEI: Your Honor, we think the Court's charge  
23 here is the standard charge, and we think that this is  
24 appropriate. It covers all the circumstances that the court's  
25 instructions as to knowledge earlier are sufficient to cover

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1 any questions on this issue. We don't think that anything  
2 needs to be added to this very standard conscious avoidance  
3 charge.

4 MR. SCHWARTZ: I don't think the government disagrees  
5 that what I've just said is an accurate statement of the law,  
6 and I think it would be much clearer to the jury, again,  
7 especially given where this appears in the charge, at the end  
8 and separated from all the other stuff about mental state.

9 THE COURT: Two points. I understand your point. I  
10 will take a closer look at this and see if there is language  
11 that can be added that makes it clearer that it only goes to  
12 the knowledge prong. But do you think it should be somewhere  
13 else in the charge?

14 MR. SCHWARTZ: I mean particularly if you're not going  
15 to give that instruction -- which I think you ought to -- I  
16 think it would make more sense to put it at the beginning  
17 before you get to the substantive counts, which I believe is  
18 where it had been in the original request to charge, sort of  
19 after you talk about the elements.

20 Mr. Touger disagrees.

21 MR. TOUGER: I'm not disagreeing.

22 MR. SCHWARTZ: You know, the other way to do it is to  
23 sort of work it in.

24 THE COURT: I'm sorry, I was just reading. Just tell  
25 me again what you said as to where it should be.

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1 MR. SCHWARTZ: I'm just thinking out loud, but I think  
2 it's prejudicial to have it be sort of the last thing the jury  
3 hears on this topic, so I would either put it with the  
4 discussion of the requisite mental states or when you're  
5 talking about the evidence generally.

6 But either way, I do think that just as your Honor has  
7 appropriately the second to last paragraph of the conscious  
8 avoidance charge which is the way that conscious avoidance  
9 interacts with the conspiracy charged in Count Two, I think  
10 it's appropriate simply to put in a sentence or two talking  
11 about the way that conscious avoidance interacts with Count  
12 One, the substantive securities fraud charge.

13 THE COURT: All right. So I will take a look at that  
14 now, and I will take a look at its placement.

15 Does the government have any objection to moving it to  
16 the knowledge and intent section or right after knowledge and  
17 intent? So I think we're talking about page 32.

18 I think it's fair to add a line indicating that  
19 conscious avoidance cannot be used as a substitute for finding  
20 the defendant acted with the requisite intent, particularly if  
21 it's specifically in a section on knowledge, intent and  
22 willfulness; you want to make sure it's clear that they  
23 understand it's going to knowledge and not intent. But do you  
24 have a problem moving it to the bottom of 32 before the third  
25 element?

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1 MS. TEKEEI: No, we don't have a problem with that.  
2 And we will just note that in the conscious avoidance charge,  
3 the substitution language, that conscious avoidance is not a  
4 substitute of proof, it's in there twice. It's in there first  
5 just with respect to knowledge generally and then second again  
6 towards the end of the charge with respect to whether a  
7 defendant joined in the conspiracy.

8 So, it's in there two times in two different areas. I  
9 think that is more than sufficient.

10 THE COURT: OK. So I will take a look at that. But  
11 are we clear on where it should be, in your view?

12 MR. SCHWARTZ: Look, I'm less bothered by its  
13 placement if your Honor includes that language, which I think  
14 is clarifying it.

15 The point Ms. Tekeei makes -- which is a good one --  
16 your Honor says in two different places that in respect to  
17 different things conscious avoidance is not a substitute, and  
18 so the negative inference there is it may be a substitute for  
19 knowledge and intent.

20 THE COURT: I don't have a problem adding that  
21 reference in. If I do that, do you want me to move it or not?

22 MR. SCHWARTZ: It's not necessary if you put that  
23 language in.

24 THE COURT: OK.

25 MR. SCHWARTZ: The other stuff I had is in the nature

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1 of nits.

2 On page 19 I'd ask you to restore the word "good".

3 THE COURT: I'm sorry. I have that on 18. I have  
4 character testimony on 18.

5 MR. SCHWARTZ: But we're looking at the same thing.

6 THE COURT: I thought you said 19. I mean I think  
7 when you say you have a reputation for honesty and  
8 trustworthiness it assumes it to be good. I don't know what  
9 bad honesty is.

10 MR. SCHWARTZ: Dishonesty.

11 THE COURT: No, I know, but that's the point, right,  
12 dishonesty as opposed to honesty.

13 MR. SCHWARTZ: But your reputation can be a good  
14 reputation or bad reputation. The testimony was that it was a  
15 good reputation. I don't think there is any harm in being  
16 clear.

17 On the following page -- sorry, just a typo, but since  
18 this is going to be handed out to the jury -- in the new  
19 language on the third line from the bottom it should be "you  
20 may not draw any conclusions".

21 THE COURT: I'm sorry. Tell me exactly where it is  
22 again?

23 MR. SCHWARTZ: This is the new paragraph on persons  
24 not on trial.

25 THE COURT: OK.

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1 MR. SCHWARTZ: "As I instructed you with respect to  
2 the testimony of the cooperating witness in this case, you may  
3 not draw ..."

4 THE COURT: Right. Thank you. And I just want to  
5 make sure we have already talked at this point, yes, OK, about  
6 cooperating witnesses. I just wanted to make sure it was in  
7 the right order. Go on.

8 MR. SCHWARTZ: Then on page 26 -- and this was  
9 appropriate following the charge conference -- your Honor  
10 struck the language about some of the evidence in this case was  
11 limited to only one defendant. Of course now we have heard  
12 evidence that's limited to only one defendant, which is the  
13 evidence of John Galanis' guilty plea. That concept is  
14 explicitly in the 404(b) charge, so I'm sort of agnostic to it,  
15 but I want to make sure your Honor thought about it.

16 THE COURT: Yes, I did. I think it's covered by  
17 404(b).

18 MR. SCHWARTZ: I think that's fine.

19 THE COURT: OK.

20 MR. SCHWARTZ: And in the final point, we received the  
21 verdict sheet. Obviously your Honor has our proposed verdict  
22 sheet and our objections, and you have made your choice, which  
23 we object to but we understand. I do want to renew my  
24 request -- which I think is appropriate given the burden of  
25 proof -- that the verdict sheet be listed not guilty/guilty,

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1 rather than guilty/not guilty.

2 THE COURT: That's fine, I will do that.

3 MR. SCHWARTZ: Thank you.

4 MS. TEKEEI: Your Honor, we handed up multiple samples  
5 of verdict sheets in our submission from I believe it was  
6 Sunday evening. They all -- the standard format is guilty and  
7 then not guilty. The defendants in Tussman raised this, and  
8 Judge Gardephe said, no, I'm going to keep it like it is. I  
9 think that's the standard.

10 THE COURT: I think judges can do either. I don't  
11 think there is a significant difference. I'm just going to  
12 change the order. I don't think it matters either way.  
13 Obviously, the jury is going to be focused on the substance and  
14 not the presentation.

15 Does anyone else have any objections?

16 MS. TEKEEI: We just had one objection, your Honor.  
17 It's our page 33. It appears in the knowledge, intent and  
18 willfulness section. I'm not sure what page it is in your  
19 Honor's version.

20 Your Honor added a phrase to the end of sentence. I  
21 will just read the whole sentence. "A person who acts on a  
22 belief or opinion honestly held is not punishable under the  
23 securities fraud statutes merely because his opinion or belief  
24 turns out to be wrong." And this is the portion that your  
25 Honor added, which was "including that if that mistaken belief

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1 is the result of having been actively deceived by another  
2 individual."

3 We understand that concept, but we think that  
4 encompassed in the Court's general good faith instructions is  
5 that concept that good faith means your honestly held beliefs.  
6 We think that the addition of including that mistaken belief is  
7 the result of having been actively deceived by another  
8 individual endorses the defense's theory that they were all  
9 actively deceived by one particular individual.

10 And the Court previously -- and we have all agreed  
11 neither the indictment nor the defense theories are going back  
12 to the jury. I think this is a way of getting the defense  
13 theory to the jury in a way when that concept is already  
14 encompassed in the good faith instruction.

15 MR. SCHWARTZ: I mean we talked about this explicitly  
16 at the charge conference, and your Honor decided to include it,  
17 I think appropriately so. Elsewhere in the charge you have  
18 examples such as negligence, foolishness, things like that.  
19 And to round out the picture -- particularly in light of the  
20 evidence that this jury has heard -- it's appropriate to  
21 include this clause, which is an accurate statement of the law.

22 It's not an endorsement of a defense theory or even a  
23 charge on a defense theory, any more than the entire charge is  
24 a charge on the government's theory. It is the law as it is  
25 relevant to the case that these jurors have heard, and we think



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Summation - Ms. Notari

1 it's appropriate.

2 THE COURT: OK. So I will think about that, and I'm  
3 going to add a little bit of language into conscious avoidance,  
4 and then I will make the little nit suggestions.

5 MS. NOTARI: Can I go to the bathroom?

6 THE COURT: Yes. And I will check on the jury now.

7 (Continued on next page)

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Summation - Ms. Notari

1 (Jury present)

2 THE COURT: Good morning, everyone. You may be  
3 seated.

4 Ms. Notari.

5 MS. NOTARI: Good morning, everyone. It's been  
6 probably the five longest weeks of my life. I'm exhausted. I  
7 lost five pounds, and I'm very excited and eager to talk to  
8 you. I think when I first spoke with you I was probably more  
9 nervous, and I'm a little more comfortable now. It had been a  
10 long time since I had been in a jury trial, so...

11 But as a trial lawyer I was thinking last night and we  
12 were talking about movie references, and I'm from Brooklyn and  
13 people have told me throughout my life, because I grew up  
14 around the same time as Marisa Tomei, my husband always makes  
15 fun of My Cousin Vinny because it's one of his favorite movies  
16 and he somehow sees a similarity between me and her.

17 But, anyway, in My Cousin Vinny, which is one of my  
18 favorite movies, there is a scene where Marisa Tomei is Joe  
19 Pesci's girlfriend, and she is brought in to testify, and she  
20 is qualified as an expert mechanic because she comes from a  
21 family of mechanics, and in this scene in the movie, it's the  
22 pivotal scene where the defense introduces a photograph and  
23 they realize that in this photograph you can see the tire  
24 tracks from a different view, and it's a homicide case where  
25 Joe Pesci's cousin is charged with murder in I think it's a

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Summation - Ms. Notari

1 small town in the South, and it is through the testimony of  
2 Marisa Tomei and this picture, this photograph, that she  
3 changes the whole case and turns it upside down, and everything  
4 is found in that photograph.

5 So, in thinking about this case, you know, we have  
6 been here for five weeks, and you heard I think Mr. Schwartz  
7 said 19 witnesses, and none of those witnesses -- I think 16 of  
8 those witnesses had never met Mr. Cooney. There were only  
9 three witnesses that ever heard of the name Mr. Cooney, and two  
10 of those witnesses were the government's chief cooperators in  
11 this case, and both of them -- and we will get to that; I'll  
12 review that -- but both of them had zero to say about  
13 Mr. Cooney's knowledge of the fact that Jason Galanis  
14 misappropriated the proceeds of the bonds. Those witnesses  
15 barely spoke to Mr. Cooney.

16 You know, this case, it's difficult because the  
17 government, so much of their evidence is focused on friends,  
18 friends, friends, and we see their emphasis on these e-mails --  
19 which I will get to -- and, yes, there is no doubt about it,  
20 they were friends, but there is simply no --

21 And if you recall in my opening statement I came out  
22 and made a very broad statement. I said to you -- and, you  
23 know, when you're a defense lawyer, you have to be careful to  
24 what you say to a jury in opening statements, because you can  
25 be sure you are going to be held accountable for what you say

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Summation - Ms. Notari

1 at the end, and the government is going to say Mrs. Notari said  
2 in her opening statement.

3 Well, I said to you in opening statements that you're  
4 not going to hear a shred of evidence in this case about the  
5 WLCC bond and the fact that Mr. Cooney knew the proceeds of  
6 that bond were misappropriated. I said what you are going to  
7 hear are distractions that have absolutely nothing to do with  
8 the bond.

9 And I said that the government, if you recall, I said  
10 they're going to throw a lot of mud, and they're going to ask  
11 you to -- we're going to hold up a clear glass, and they're  
12 going to hold up a dirty glass or a muddy glass, and they're  
13 going to ask you to look at the evidence through the muddy  
14 glass.

15 So my hope in my summation is to take you through the  
16 evidence and to take you through the evidence in a way that you  
17 can go back into the jury room and you can piece by piece look  
18 at this evidence and you can realize that Mr. Cooney is telling  
19 the truth.

20 We are not here to deceive you. We are not here to  
21 throw mud on the walls. In this case it's actually the  
22 government who is actually trying to deceive you and throw mud  
23 on the walls, and I'm going to show you exactly how that has  
24 happened.

25 Mr. Schwartz yesterday, I think he said that

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Summation - Ms. Notari

1 Ms. Mermelstein told an excellent story but it wasn't based on  
2 evidence it was based on argument. And there is a difference  
3 between evidence and argument.

4 So, when you look at the evidence and you think about  
5 what Ms. Mermelstein argued, you have to say, well, is this  
6 based on just your spin, or is this actually grounded in the  
7 evidence in this case? And I submit to you that I will show  
8 you that her arguments are grounded in arguments, in prejudice,  
9 in mud, and not in evidence, not on what happened, not on the  
10 truth. And I would hope that in our system of juris prudence  
11 that jurors want to know the truth.

12 And I also told you in opening statements that we took  
13 a lot of care and a lot of time in choosing smart jurors,  
14 because in this case you have to be smart. There is so much  
15 complexity, but at the end of the day it's actually very  
16 simple. At the end of the day the question is did the  
17 government prove beyond a reasonable doubt that Mr. Cooney knew  
18 that Jason Galanis misappropriated the proceeds of the bond.  
19 And I submit to you that there is no way he could have known  
20 that. I submit to you that he was a passive investor -- and we  
21 will get to that -- that the two cooperators -- Hugh Dunkerley,  
22 who was in charge of the annuity for Wealth Assurance, he  
23 didn't even know what was going on; he didn't know that the  
24 bond proceeds, that Jason Galanis recirculated the money that  
25 went from WLCC to Wealth Assurance. He had no idea. So at

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Summation - Ms. Notari

1 some point he realized, but the fact that he didn't know, there  
2 is no way that Mr. Cooney could have known.

3 And you have to think about how do we know what  
4 Mr. Cooney knew? How do you know what someone knows? You  
5 know, in mysteries, murder cases, investigators, what they do  
6 is they profile people. Right? And people, you know, everyone  
7 has a profile in a sense that if you come home and your husband  
8 comes home, or your spouse, you know pretty much every day what  
9 they're going to do.

10 I mean I'm sure you have that common experience where  
11 my dad is obsessed with turning off the lights, and he drives  
12 me crazy because every time he comes into my house he talks  
13 about the lights and the doors, and it's a hundred percent  
14 predictable.

15 And in the same way in this case Mr. Cooney does not  
16 fit the profile of a person who commits fraud; he just doesn't.  
17 You know, you can tell that he is an older man, he's  
18 certainly -- there is no evidence that he has ever been in  
19 trouble before. And he surrounded himself with professionals.  
20 He knew that -- the evidence -- and I told you about this in  
21 the beginning -- that he was -- he was not an investor. I mean  
22 he was not an investment banker. He was not a financial  
23 analyst. He was not an accountant. He's not a lawyer, CEO,  
24 decision maker, administrative leader; he never worked at a  
25 finance firm. He did not go to a fancy Ivy League institution.

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Summation - Ms. Notari

1 And he was none of these things, but he made sure in his life  
2 that he surrounded himself with business professionals,  
3 business managers. And you are going to hear -- and I'm going  
4 to talk about it -- and you've heard in this case -- with  
5 Fulton Management, Fulton & Meyer. And he made sure for many,  
6 many years before this bond -- because you learned that he was  
7 an investor, and we learned that his background was that of a  
8 person who owned the Viper Room -- which is a famous music  
9 venue spot -- maybe some of you have heard about it -- but it's  
10 on the Sunset Boulevard in Los Angeles. It's a very famous  
11 place, and he was once part owner of that, and a lot of his  
12 contacts are in the music industry. And he represented hip hop  
13 artists, and you're going to hear in a minute, you're going to  
14 see, I'm going to take you through a snippet of a text message  
15 between Jason Galanis and Michelle Morton.

16 Now, Michelle Morton really has nothing to do with  
17 Mr. Cooney. All of the bond proceeds happened for the most  
18 part in 2014, in October of 2014. I think Mr. Schwartz said  
19 yesterday by October 29 the first two tranches had been done.  
20 And you're going to see in this text that Michelle Morton on  
21 March 5, 2015 says who is Bevan Cooney. She had no idea who he  
22 was. And in that text you will hear that Jason Galanis, you  
23 know, his modus operandi, this guy -- and this is like very  
24 troubling, because the government has completely ignored the  
25 fact that Jason Galanis is an epic conman.

I6R7GAL1

Summation - Ms. Notari

1           And you heard about the testimony where he is -- I  
2       mean if you didn't really hear it, you almost wouldn't believe  
3       it. OK? You wouldn't believe that a person like this who is  
4       associating with the high level of sophisticated businessmen  
5       and the top lawyers and, you know, I'm talking about Stamford  
6       educated, Yale educated, you know, driving Bentleys, living in  
7       a 1920 Bel Air mansion, you know, flying jets, you would never  
8       believe that this man has two worlds. He's got the world of  
9       legitimacy -- and you heard about the two Jasons. Hugh  
10      Dunkerley testified that he did some Internet research on Jason  
11      Galanis, and he found out before he started to work with him,  
12      he found out that there were two Jasons. There was the Jason  
13      who some people said was a great business person, and then  
14      there was the Jason that other people didn't like. And he went  
15      to work with him, and we realized, you know, what came later,  
16      that she became part of his underworld with Gary Hirst and  
17      Francisco Martin.

18           And this was a very closed world, and Jason Galanis  
19      intentionally controlled them, and he didn't allow them to have  
20      access to people, because he was afraid that if they had access  
21      to people, that house of cards, that house of lies that his  
22      castle was built on, would fall apart. And it makes sense.

23           So, we have the two worlds of Jason Galanis. And in  
24      order to maintain that world, he had to keep the dark world.  
25      And there is no secret, the people in that dark world knew who



I6R7GAL1

Summation - Ms. Notari

1 they were dealing with. Mr. Dunkerley and Francisco Martin  
2 spoke to each other. There was the evidence about the white  
3 board room at 1920 Bel Air, the SEC had started an  
4 investigation in late 2015, and they convened at Bel Air and  
5 they started drawing up charts and manufacturing false  
6 documents and backdating.

7 And this was -- you know, this was not -- this was in  
8 response to a federal investigation. This was in response to  
9 knowing that these documents were going to be turned over to  
10 the federal government and be investigated. And that didn't  
11 stop any of them.

12 And Dunkerley testified that he -- and Francisco  
13 Martin -- that Galanis was the master, and they followed his  
14 directions. And they had a lot of similarities. You know,  
15 they were both down and out. Francisco Martin hadn't worked in  
16 three years, and they both were failing to pay their child  
17 support, and they both -- there is this common theme of like  
18 false identities and multiple e-mails. And, you know, we're  
19 going to get to more of this. I'm just giving you kind of --  
20 bringing you into the world of Mr. Cooney -- who knew nothing  
21 about this, OK -- and I'm trying to contrast what their lives  
22 were like with what Mr. Cooney's life was like.

23 Mr. Cooney is -- he is -- and what you heard me say in  
24 my opening statement was he is from Montana, and he is a people  
25 person. He is the kind of guy that walks into a restaurant and

I6R7GAL1

Summation - Ms. Notari

1 he makes friends and people love him, and he is very friendly.  
2 And his job -- and again what I want you to realize is that  
3 when you're telling the truth, when you're telling the truth  
4 and you have nothing to hide, everything adds up.

5 And you know sometimes somebody lies to you and you're  
6 like that just does not add up, I'm sorry, what you're telling  
7 me belies common sense. And we just know that. We just know  
8 that. As jurors you can take your common sense into the jury  
9 room.

10 And I want you to realize that I'm not asking you --  
11 the government is asking you -- they're drawing these arguments  
12 not based on the evidence. I'm asking you to just do your due  
13 diligence, and when you go back to the jury room to really  
14 focus on the evidence and see how it just doesn't make sense.

15 First of all, their theories in this case have changed  
16 from the beginning. And I'm going to go through that with you.  
17 In the beginning I think in opening statements they said that  
18 Mr. Cooney -- this was a plan from the beginning, you know,  
19 this conspiracy -- and they took millions of dollars from the  
20 WLCC people, and now it becomes -- Tim Anderson testified --  
21 and I'm going to go through this in a minute -- but Tim  
22 Anderson testified -- this is the lawyer from Dilworth  
23 Paxson -- and suddenly he didn't even know Mr. Cooney's name  
24 until October 6, there was a backup plan, and the bonds fell  
25 through, and Mr. Cooney was -- well, how could it have been a

I6R7GAL1

Summation - Ms. Notari

1 plan from the beginning if Mr. Cooney wasn't even on the agenda  
2 to be buying these bonds until well after this whole plan  
3 started?

4 And Ms. Mermelstein said, you know, this financial  
5 conglomeration was just a plan to -- they weren't interested in  
6 getting immediate money from the bonds; they were looking at  
7 the long run.

8 You have to understand how many resources, how much  
9 money Mr. Schwartz talked about, the financial conglomeration  
10 and the Teneo consulting report, and how much went into this.  
11 This is not fly-by-night people; these are top, world class,  
12 elite financial investors from Burnham -- from the top, Morgan  
13 Stanley, Goldman Sachs.

14 I mean those of us who live in that world where we  
15 have access to those kinds of people -- you know, my nephew is  
16 in college right now. What he would do to get his foot into  
17 Goldman Sachs. I mean these are the most highly vetted  
18 financial institutions in the world, and this is the kind of  
19 people that were involved in this financial roll-up, and it  
20 just doesn't make sense.

21 Now, we have to -- I want you to think about  
22 Mr. Cooney and how he became involved in Burnham. And he was a  
23 person who -- as I said, he invested in the Viper Room, and he  
24 would basically put people together in deals. We heard that  
25 from Steve Shapiro, that he was the guy, he would bring people

I6R7GAL1

Summation - Ms. Notari

1 and put people together in deals, and then he would get a  
2 commission. He was also involved in IPO companies, start-up  
3 companies, like helping them go public and then very often what  
4 happens in those situations is you get -- you get stock,  
5 restricted stock, and then eventually you can sell that stock,  
6 and while you don't get paid in a salary, you get paid in  
7 stock, and that's another thing that he was involved in.

8 And so what that meant, I'm going to say this now,  
9 although it's relevant for later -- of course of I have all  
10 this script here and I'm not following any of it -- but what  
11 that meant in his life was that, you know, he wasn't a wage  
12 earner, he didn't get the salary like many of us get a  
13 paycheck. And sometimes -- sometimes, you know, he had --  
14 there were periods of time where he didn't have a steady  
15 income, so Steve Shapiro said he was a long-standing customer  
16 at City National Bank, and he would get a loan. And before  
17 this whole situation with Jason Galanis -- and you can do the  
18 timeline, his life was on the rise, and everything was  
19 fantastic. But things happened and everything sort of fell  
20 apart, and we're going to get to that in a minute.

21 But getting back to how he became involved in Burnham,  
22 he was given this fantastic opportunity. He had made money in  
23 2012, 2013, he had money to invest, and he had access to a lot  
24 of people because of his contacts. He was working with Jay Z.  
25 He was part of Jay Z's Roc Nation. He was working -- he had --

I6R7GAL1

Summation - Ms. Notari

1 through the Viper Room and all of his LA contacts -- and you  
2 heard Steve Shapiro say that City National Bank, he worked in  
3 the entertainment division, and Fulton Meyer was an accounting  
4 firm, very reputable accounting firm that had a lot of athletes  
5 and celebrities, and Mr. Cooney was very much living in LA, and  
6 he was very much a part of that world, and one can only imagine  
7 when you're an owner of the Viper Room you probably meet a lot  
8 of people who are very successful.

9 (Continued on next page)

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I6RJGAL2

Summation - Ms. Notari

1 And that was really what made him of interest to Jason  
2 Galanis, because Jason Galanis, and you are going to see it in  
3 a minute, but when someone is again a profile, a profile of an  
4 epic fraudster, Bernie Madoff, those kinds of people, there is  
5 actually like textbook characterizes of those kinds of people,  
6 psychological profiles, and he is the chameleon.

7 When you hear him talk to Michelle Morton, you kind of  
8 want to take a shower because it is so, it is so sleazy the way  
9 he is talking to her and she is working him and he is working  
10 her and he is just constantly working on promoting his lies.

11 This whole notion that Bevan Cooney was his childhood  
12 best friend and best friends, best friends. They were  
13 definitely friends, but Mr. Cooney grew up in Montana, and I  
14 can assure you Jason Galanis was not his childhood friend. It  
15 was just this constant working people and, you know, you heard  
16 that from the cooperators who testified, they were just lied  
17 to. Sometimes it was hard to know when you were being told the  
18 truth, and Dunkerley said some of them thought at first this  
19 was all legitimate, and then they didn't, but, in any event,  
20 Mr. Cooney's involvement in Burnham was a life-altering event.

21 This put him in a different, a different aspect of  
22 his. Before he was like, you know the investor in the bar and  
23 now suddenly he is like a minority shareholder in Burnham  
24 Financial Group, and he invested \$400,000. There is Mr.  
25 Cooney.

I6RJGAL2

Summation - Ms. Notari

1           We saw, and you are going to see -- go to the next  
2 slide -- Saranya testified, my dear paralegal, and it was a  
3 little mistake that the government found in the chart, but  
4 you're going to see when you go back in the jury room, we tried  
5 to make this as user friendly for you as possible, you can see  
6 the very first entry is \$400,000, and this actually -- one of  
7 the beautiful things about Bevan Cooney and the way his life  
8 was, everything he did was documented because of his business  
9 managers. They paid his bills, they paid -- they literally  
10 paid his magazine subscriptions, paid his monthly bills, his  
11 car payments.

12           Any time money came in, he would call up Alexis  
13 Gluckman and you're going to see in a minute all the wire  
14 transfers and all the things, and she would say a wire just  
15 came in. He would say put that as a loan. Again, the  
16 government will say oh, this is just a bunch of, you know, he  
17 just was making all of this up.

18           But again you're going to be able to go back in the  
19 jury room and you're going to be able to match up the bank  
20 records. There is a financial liabilities chart, Government  
21 Exhibit 423. You are going to be able to go and match  
22 everything up. You are going to see the math, it all adds up  
23 perfectly because his business managers were top notch.

24           They made sure and he made sure, you know, he wanted  
25 to be law-abiding. He filed his taxes. You haven't heard any

I6RJGAL2

Summation - Ms. Notari

1 evidence of the fact that he was evading taxes or -- they talk  
2 about this 1920 Bel Air. There is no allegation of real estate  
3 fraud. It is just speculation, speculation, speculation, mud  
4 on the walls, mud on the walls, and just be very, very clear  
5 that it is a strategy. It is a strategy.

6 Lawyers have strategies, and I am telling you there is  
7 no strategy here. We have nothing to hide. We really just  
8 want you to give Mr. Cooney his fair day and to really just  
9 keep an open mind and to really just look at all this evidence  
10 and to realize that it just doesn't make sense.

11 So he started investing in Burnham, and you heard --  
12 you know, one of the great things about this case, not only do  
13 you get to see his records, but you get to hear his voice, and  
14 there is a recording which the government did not want you to  
15 hear that came from the defense, and that recording, you're  
16 going to get to listen to that recording. You heard it once,  
17 but that recording really goes into exactly what his state of  
18 mind was.

19 I am not sure if this was -- okay. You can see we  
20 highlighted some excerpts here, but in that recording he is  
21 talking to someone, this Billy Crafton in a bar and it is like  
22 there is a lot of music playing in the background and John  
23 Denver is playing and they're having drinks, which to me is  
24 telling because alcohol is actually proven to be the truth  
25 serum.



I6RJGAL2

Summation - Ms. Notari

1           When you drink alcohol, it is known to be like you  
2 tell the truth. This is what he is telling Billy Crafton.  
3 This is May of 2014, and he started his investments in Burnham  
4 in April, and so he had been involved in this. Again I want  
5 you to pay attention to the dates because the dates are all  
6 very important. In this tape recording, which you can assume  
7 he doesn't know this is a recording, and it is just all what  
8 his state of mind is.

9           He is saying how, you know, you have these layers of  
10 legitimacy with all the deals we are doing now and he is  
11 excited he is part of this venture, this business with Devon  
12 Archer and the excitement of his connections to Joe Biden and  
13 Chris Heinz, and the government is like poo-pooing this, but  
14 this is the reality of life.

15           Most people, maybe some are exceptions, but Tim  
16 Anderson, he went into Burnham Financial and he saw Hunter  
17 Biden and at that moment, you know, Joe Biden was the vice  
18 president of the United States, and it made him feel good, it  
19 made him feel like, wow, wow, I am doing business in a  
20 reputable legitimate place. That is a natural feeling if  
21 you're doing business the Biden and the Kerris and the people  
22 who go to Yale, you feel like there is this layer of  
23 legitimacy.

24           He says, you know, the key to these deals and what I  
25 am doing is aligning myself with people that are a lot smarter

I6RJGAL2

Summation - Ms. Notari

1 than I am, which again is very important because in these  
2 emails, in this case Mr. Cooney is not, he is not the guy that  
3 they're going to for advice. He is the guy who -- the passive  
4 investor. All of the meetings they talked about, the Teneos,  
5 the report with all the executives, he is not part of that.

6 He is just relying on all those people, and in his  
7 emails, and we are going to focus on that, they're all kind of  
8 ridiculous. They're all like cheerleading and excited and  
9 there is never like -- you can play a game and go back to the  
10 jury room and try to find a Cooney comment that is actually  
11 very detailed or sophisticated or responsive. There is nothing  
12 like that.

13 He is just very excited. This recording shows his  
14 excitement, and I have included a chart, if we can go to the  
15 next chart. Now, these emails, I think there is so many emails  
16 but these emails I hand selected because in my mind, they kind  
17 of speak to his state of mind and where he was at this time.

18 You can see in February of 2015 he emails his mom. He  
19 says mom, this is why we bought Burnham, Drexel Burnham, just  
20 an amazing history. An article from the New York Times five  
21 years after its collapse, we are going to have the exhibits in  
22 the back, have defense exhibit binder and you can look at the  
23 exhibits.

24 One thing I want you to really focus on is, you know,  
25 there is defense exhibit stickers and government exhibit

I6RJGAL2

Summation - Ms. Notari

1 stickers and to be honest, in this case we have nothing to  
2 hide, so the government exhibit stickers don't, they don't,  
3 they're just -- they're all very innocuous. In my mind,  
4 they're totally consistent with his innocence, but the  
5 government is trying to spin them, and I will sort of focus on  
6 some of those emails.

7 The government will take any one of these emails, I  
8 promise you, and spin it in a negative way. Try not to pay  
9 attention to -- try to look at this objectively and blindly  
10 because it just didn't make sense to copy exhibits twice, and  
11 so we could have made double versions of everything, but  
12 instead at least in my case we didn't do that. We relied on  
13 their exhibits. So here you see like this is a state of mind  
14 email I am relying upon as a government exhibit.

15 In this particular slide here, Bonwick Burnham term  
16 sheet, he says this is solid. He is emailing here is -- this  
17 is Eric Fulton. Now, Eric Fulton is the owner of Fulton &  
18 Meyer, who is Fulton Management. We are going to talk a lot  
19 about that. He is his primary. He has hundreds and hundreds  
20 of clients and he is Bevan's -- the primary contact for Mr.  
21 Cooney was Eric Fulton because they had such a good,  
22 long-standing relationship.

23 In these emails you can see Mr. Cooney's state of  
24 mind. I just want to focus also in the audio of Mr. Cooney,  
25 his final words on that tape are if you believe in the deal and

I6RJGAL2

Summation - Ms. Notari

1 the people who are on the deal, then you'll do the deal. That  
2 is again that was his state of mind. He saw this, he saw his  
3 investment in Burnham as an opportunity of a lifetime that  
4 would take his career to the next level and that he was going  
5 to be, have, you know, he was just going to be part of this  
6 financial conglomeration, this financial roll-up which you  
7 heard a lot of testimony about and reference to.

8 Let me just talk about that for a minute. Now again  
9 the government is saying that this financial roll-up was just a  
10 scheme to make money and, you know, but, you know, the  
11 financial roll-ups and Paul Atkins was an expert that  
12 testified. He said there are different ways that companies,  
13 corporations grow, and some corporations grow organically and  
14 some corporations grow by acquiring other companies, like the  
15 reference he gave was Disney acquiring ABC, and we know from  
16 recently Amazon purchased Whole Foods, and this is an entirely  
17 legal and acceptable model of corporate growth.

18 There are repeated emails, and if we can go to the  
19 next -- oh, no, that is not the one I want with the financial  
20 roll-up. Well, this actually is a good email for you to  
21 reference because in this email it is called roadmap. These  
22 are government exhibits, right?

23 It is important for you to understand when you're  
24 looking at these emails, they're almost always Jason Galanis,  
25 his vision, and there is like marketing research and he is

I6RJGAL2

Summation - Ms. Notari

1 always like putting everything together and he's -- in this  
2 particular -- this is like the vision of what the roadmap is,  
3 and it says investment -- can you go back to that for a  
4 second -- so investment banking and Wealth Assurance, energy  
5 resources, insurance, technology, special opportunity,  
6 structured finance, so this was like the Guggenheim model, this  
7 is what they were hoping to build.

8 This you see Mr. Cooney saying roadmap coming  
9 together, love it, Greek. Greek was like the nickname he  
10 called Jason Galanis. There is a lot of nicknames because, you  
11 know, the government is trying to spin this in a way that these  
12 emails are evidence of like some sinister motive, but you have  
13 to remember, you heard from Tim Anderson that he looks forward  
14 to levity in the day with like a fun email, and the same was  
15 true for Steve Shapiro when I talked about his text messages,  
16 his emails with Matthew Fullman, that business people are  
17 human.

18 It is not uncommon when people are funny and doing  
19 business together, they joke around. When you look at this  
20 email, you have to look at them from the perspective that  
21 they're not trying -- this is just all very legitimate and  
22 they're all just trying -- yes, at the end of the day they're  
23 finance guys and they're trying to make money, and there is  
24 nothing wrong with people trying to make money.

25 Can you go to the next slide. So here we have what

I6RJGAL2

Summation - Ms. Notari

1 you've seen many times before, and this was the Teneo  
2 Consulting firm which a lot of money was spent on, and here you  
3 see like the executive management team and you can read their  
4 bios. There is no, there is really no way that anyone would  
5 see this and ever, ever believe that this was not 100 percent  
6 legitimate.

7           You have to understand that, first of all, Mr. Cooney  
8 is not featured anywhere there, okay? Mr. Cooney did not have  
9 the pedigree or the background that he could be -- he could  
10 have an office at Burnham. It is not to say he was, he was  
11 just, these are very high profile people, and so Mr. Cooney  
12 brought something different to Burnham in the sense that he  
13 really had access to really high net worth people who -- one of  
14 the things you're going to hear shortly his best friend Kevin  
15 Washington was a billionaire, and he had, he just had a lot of  
16 high net worth friends and he was a people person and he  
17 brought people together.

18           He just was a minority shareholder, and all of this,  
19 he invested \$400,000 which for him was a lot of money because  
20 if you look at the paperwork, you know, he is making maybe a  
21 good year, I think it says 800,000, 850,000, but he is not, he  
22 is not, you know, in the league of any of these super-wealthy  
23 guys trying Bentleys.

24           He is still a pretty much regular person, but he is  
25 not featured in any of these -- you are not going to hear or

I6RJGAL2

Summation - Ms. Notari

1 see anything where there is an important business meeting. He  
2 didn't participate in any of these meetings. There is no  
3 evidence that Mr. Cooney participated in any Teneo meeting. In  
4 fact, Hugh Dunkerley said he wasn't even there.

5 Hugh Dunkerley testified he didn't have, he didn't  
6 have an office, period, as far as he knew. Perhaps the best,  
7 again like in terms of his profile, he has a BT Cooney at Gmail  
8 address. That is the only email. He doesn't each have a  
9 computer. You are going to see in the emails it is iPhone,  
10 iPad. He doesn't have a computer. So any notion that he just  
11 was a passive investor.

12 Can we go to the next slide. Okay. Right. We can go  
13 back to the other one. So it is important to understand that  
14 the WLCC bond and Mr. Schwartz has said this, and you have  
15 heard this, was just one tiny aspect of everything that was  
16 going on, and the WLCC bond was Mr. -- Mr. Cooney had nothing  
17 to do with putting that bond together. I just want to focus on  
18 one more thing.

19 Can you go to the next slide. No. The Hugh Dunkerley  
20 testimony about the financial roll-up. I just want to -- this  
21 is an example of the government ignoring evidence in this case.  
22 So the government said to you in their summation that the  
23 financial conglomeration was basically from the get-go a scam,  
24 and this is Hugh Dunkerley, their chief cooperator, and the  
25 question that was asked was all of these companies, Burnham

I6RJGAL2

Summation - Ms. Notari

1 Securities, Burnham Asset Management, Hughes Capital  
2 Management, Fundinvest Capital, they were actually acquired on  
3 part of this roll-up strategy, right. They collectively  
4 managed many billions of dollars, correct? Yes. They were all  
5 real and legitimate, true? Absolutely. It goes to the next  
6 page.

7 And so I encourage you in this case, because there are  
8 16, 19 witnesses, but really the only witnesses that really  
9 matter in this case, because, because we're not contesting, at  
10 least Mr. Cooney is not contesting that there was a fraud, that  
11 the victims, WLCC and the pension fund, we're not disputing  
12 that. The only thing that is in issue in this case is whether  
13 Jason Galanis -- whether Mr. Cooney knew that Jason Galanis was  
14 misappropriating the funds, which there is no way he could have  
15 known that.

16 So the only witnesses that you really, you know, need  
17 to hear from are the cooperators regarding that, Hugh Dunkerley  
18 and Francisco Martin who say absolutely nothing. I will go  
19 through that in a minute.

20 Anyway, the fact that this was not legitimate, and  
21 even here it goes on to say in his testimony that the bonds is  
22 just one aspect of Burnham. So the government is not only  
23 misleading you, but they're ignoring the testimony of their own  
24 chief cooperator, and that is what this case is based on.

25 So I just want to talk to you a little bit about



I6RJGAL2

Summation - Ms. Notari

1 trust. You know, I think it is important for you when you  
2 consider this case -- you know, everyone is a Monday morning  
3 quarterback and everyone is ha, ha, ha, you how could they have  
4 done that, but you have to again consider, to use Mr. Cooney,  
5 the layers of legitimacy, and in this case, Mr. Cooney had no,  
6 he was just a passive investor, but trust is so key because,  
7 because we all, when we make our life decisions, we have to --  
8 whether we're buying a car or whether we're getting surgery or  
9 no matter what decision we make, it is all about trust.

10 Trust is something that comes from, it is just if  
11 somebody has credentials, you know, it is going to make a  
12 difference to you whether you trust them or not, you know? If  
13 you're looking for a surgeon and they have gone to -- they're  
14 working at a top -- it is the first question people ask, what  
15 hospital are you going to, what doctor? People want to know  
16 where the doctors are educated, where the lawyers were  
17 educated, and these were the things that have an impact on  
18 whether you trust. You know what I mean?

19 A lot of people go to online dating, but it is  
20 different if they're introduced to somebody. It is a  
21 difference if your friend who says hey, I have a friend who has  
22 a car and that is much better to you than lists. It is better  
23 to you and crucial to you in our decision-making.

24 In this case, if you look at what made Mr. Cooney  
25 trust first the Jason Galanis, and we talked about this a lot

I6RJGAL2

Summation - Ms. Notari

1 during this trial, and you saw the Bel Air video, the \$10  
2 million house and he led the life, he walked the walk, he  
3 talked the talk. Hey, Hugh Dunkerley told us, gave us some  
4 view of he jet-setted across the country and he flew first  
5 class and had private planes and his wife, Monet Berger, they  
6 had servants and they pampered their animals like babies, and  
7 they're just life was consistent with somebody who is extremely  
8 wealthy.

9           Their friend you heard ad nauseam, Peter Gruber, the  
10 fact Pete Gruber was a billionaire and Jason Sugarman who was  
11 Jason Galanis' business partner, his father-in-law owns, I am  
12 terrible at sports teams, the Warriors or something like that,  
13 and he was a movie producer. He actually produced The Color  
14 Purple, and he had 50 Academy Award nominated movies. You're  
15 talking about, you know, success.

16           This was the world that Jason Galanis lived in, and he  
17 also, he -- Dr. Rory Knight who eventually became one of the  
18 board of directors for Wealth Assurance, Dr. Rory Knight is the  
19 dean of Oxford, okay, and he owned this company called Oxford  
20 Metrica, and we are going to get to that. This is the dean of  
21 Oxford University in the U.K., and this is no joke.

22           Above and beyond that, you know, we've got the WLCC  
23 bond, the two leading law firms in the country, Dillworth  
24 Paxson and Greenberg Traurig are the leading law firms that  
25 deal with Native American commercial litigation. So every law

I6RJGAL2

Summation - Ms. Notari

1 firm has a reputation. Not every law firm does, you know --  
2 for example, some law firms don't do commercial litigation, but  
3 they had a niche of the kinds of work they did, and they both  
4 specialized in this kind of work.

5 And Tim Anderson, you know, Tim Anderson testified  
6 that he had done -- not only did he work for Greenberg Traurig  
7 and he had done many of these tribal bonds before, four or  
8 five, which is considerable -- the government, think about  
9 their summation. They did not talk about Tim Anderson, about  
10 the fact that the bond was legal.

11 Again they're conveniently ignoring the testimony of  
12 their first witness who testified over several days, and if you  
13 recall his testimony, it is shocking. He just went on and  
14 repeatedly said that he put the bonds together and all the bond  
15 work, you know, and you heard about the legal documents he  
16 drafted, and repeatedly he said that there was nothing unusual,  
17 he was not bothered by Jason Galanis' involvement, but again  
18 this was all Mr. Cooney had nothing to do with putting this  
19 bond together.

20 You know, this case is like, you know, we're all in  
21 this courtroom together, but we're kind of -- there is  
22 separation in the sense that we don't have anything to do with  
23 putting this bond together. There is not one email between Mr.  
24 Cooney and the WLCC. There is not one contact. Raycen Raines  
25 testified he never met my client.

I6RJGAL2

Summation - Ms. Notari

1 All of those pension people that testified, you know,  
2 my heart goes out to them because nobody wants, nobody wants  
3 that to happen to your pension. That is heartfelt, that is  
4 tragic, but, but there is no way that, there is no way that Mr.  
5 Cooney could have known that that was going on because they  
6 were being lied to.

7 One of the things that became pretty apparent in  
8 Mr. Tim Anderson, when the government stood up, if we can go  
9 to, I am skipping ahead, I am sorry, Abraham, but -- yeah. So  
10 the government, this is an example of their deception. So they  
11 pointed out to you during their summation that this email is to  
12 my client from Jason, and they said this is the email where Mr.  
13 Cooney was sent all the victims that were defrauded, but again  
14 you have to be a detective in this case, and I am going to help  
15 you.

16 You have to piece together the testimony and the  
17 documents and common sense because that is like the routine  
18 theme that is going to put this altogether, but here I asked  
19 Tim Anderson about this. If you were able to read back all the  
20 testimony, and now you're able to go back and listen to it all  
21 over again, you are going to hear that Jason Galanis was  
22 telling everybody that the bonds were a great success, and he  
23 gave -- this actually was during the time that Tim Anderson got  
24 the green light for the second tranche of bonds because Jason  
25 said it was successful, there were all these institutional

I6RJGAL2

Summation - Ms. Notari

1 buyers that wanted the bond, there was more buyers than demand  
2 for the bond.

3 This is the same thing that he was telling my client.  
4 Again the dates, August 19th. My client does not, he does not  
5 purchase the bonds until October 6th, but this is what this is  
6 about. When I asked Tim Anderson about -- I am going to show  
7 you the next email. I want to go through this testimony. Is  
8 it fair to say you were repeatedly assured there were buyers  
9 for the bond? Yes. At some point you were told there was  
10 significant investor demand and therefore a need to invest in  
11 more bonds?

12 This is an error, but he says yes. And it says there  
13 was a BAM. I am not sure what he meant by that. Shortly after  
14 the issuance of the first bond and it closed, you received what  
15 was information from Jason Galanis, and it was called the green  
16 light to go forward with the second issuance, correct?  
17 Correct.

18 Can we go to the next exhibit -- wait. Stay here for  
19 one second. If you look at this exhibit, you'll see this was  
20 the first tranche of bonds, Atlantic Asset, and they purchased  
21 \$27 million.

22 If you go to the next exhibit, this was the exhibit  
23 that was referenced in Tim Anderson's testimony, where he  
24 was -- Tim attaches some custodian to U.S. Bank. My  
25 presumption is the balance of the wires will be reflected, but

I6RJGAL2

Summation - Ms. Notari

1 again this was like, this was the green light, this was like  
2 things are, there are buyers who want this bond, and if you  
3 match up the two emails, you see that it is the same people, it  
4 is the same institutional buyers.

5 We know that this is a private placement bond and that  
6 these are the pension funds that are buying this bond. So this  
7 is just one example of how they spent it. They just throw it  
8 out there and say yes, Mr. Cooney, Jason Galanis was, you know,  
9 sending him a list of the people that were defrauded.

10 You know, we live in a time where it is very hard, it  
11 is very hard in any relationship these days, let alone to, you  
12 know, the government, you saw Mr. Santos come, and he had the  
13 phone, the text messages, you know, you can't -- everything  
14 is -- people don't talk on the phone any more. It is all  
15 email. These guys were jet-setting to all across the country.  
16 One was in Iowa, one was in New York.

17 There is 3 million email, three million documents, I  
18 think we heard something like that. There is something like 3  
19 million documents and there is not one shred of evidence that  
20 shows that there was any knowledge of what is being charged  
21 here. That is what you're asked, what you're being asked to  
22 Judge. It is just kind of ridiculous, you know?

23 The only thing we have is these innocuous, very  
24 cheerful, lighthearted, Mr. Cooney -- this is not proof beyond  
25 a reasonable doubt. It is really not.

I6RJGAL2

Summation - Ms. Notari

1           So but getting back to Tim Anderson, Tim Anderson,  
2 another way that -- so I talked a little bit about earlier on  
3 about Mr. Cooney was the backup plan, and can we go to 1270 and  
4 1272. Now, the truth is that Jason Galanis was so controlling,  
5 and when Mr. Cooney was -- there was testimony to mention about  
6 the investors who purchased the bond, and at one point he said  
7 that on September 23rd he got an email from Jason Galanis, and  
8 that's Government Exhibit 12070, and there it was listed who --  
9 there was the \$20 million tranche of bonds was the second  
10 issuance, and he learned who was going to be purchasing the \$15  
11 million tranche.

12           Then there is right at the end it says we will be  
13 providing information about the other buyer for the tranche of  
14 bonds the following day. That never happened. Then  
15 Mr. Anderson, when I asked him about that, he said that he did  
16 not learn the name Bevan Cooney until October 6th, 2014.

17           Then at the bottom of that email it says, you know, it  
18 is probably helpful if you write down exhibit numbers if you  
19 want to reference them later on. Again they're all going to be  
20 in a binder so you can read them. The investor for the second  
21 tranche of 5 million fell out last week. We worked out  
22 something with a backup. He is prepared to proceed. Any  
23 notion that Mr. Cooney was like from the get-go that this was,  
24 you know, this was the plan, is just not supported by the  
25 evidence.

I6RJGAL2

Summation - Ms. Notari

1 I am sure the government will come back and have an  
2 explanation for that, and some of their explanations might be,  
3 you know, might be okay, but where I am telling you that is not  
4 the case, and some of their explanations, they have no  
5 explanation for. They just have no explanation for, and we'll  
6 get to that.

7 But again Tim Anderson said he never met Mr. Cooney.  
8 Now, this is important because Tim Anderson did everything  
9 through Jason Galanis, and he did the due diligence, and it is  
10 important because he is such a high profile lawyer and he has  
11 not a shred of suspicion about Jason Galanis. He doesn't -- he  
12 thinks there is nothing awry. He specifically does his due  
13 diligence on the annuity. He said it looked, everything looked  
14 fine. From the get-go he said everything looked fine, and it  
15 might be worthwhile to ask for that read-back if you have any  
16 issues with that.

17 I think we covered it pretty well and certainly I  
18 don't know that the government, the government hasn't talked  
19 about it because obviously it is not something they want to  
20 talk about, the fact the bond was legal is something they're  
21 trying to distance themselves from because it doesn't support  
22 their argument in this case. It doesn't support their proof  
23 beyond a reasonable doubt because they want you to believe that  
24 this was a scam, that the bond was not real, and that is just  
25 not the evidence in this case.



I6RJGAL2

Summation - Ms. Notari

1 But if we move forward, Mr. Cooney was the backup, and  
2 again this is not something, this is not the biggest deal in  
3 the world because we are not saying Mr. Cooney did not, you  
4 know, was tricked into buying these bonds, but it was very  
5 deceptive the way the government, when Tim Anderson testified,  
6 they left you with, oh, and Mr. Cooney is a sophisticated  
7 buyer, correct? Sophisticated investor. That was like the  
8 testimony they elicited from Tim Anderson.

9 Well, a sophisticated investor is not -- if we look up  
10 sophisticated investor in the Webster's dictionary, we think  
11 that is a pretty strong term, right, that is a sophisticated  
12 investor. According to the Securities Act of 1933, a  
13 sophisticated investor, and I established that, it is  
14 cross-examination, he agreed with everything I said. The  
15 importance of that is that the security laws are very geared  
16 toward making sure these private placement bonds which are not  
17 registered, you know, that only certain people can be qualified  
18 to buy these bonds because of the risks.

19 I will just say there is not anything wrong with them.  
20 They're typically, Tim Anderson said it is typical these bonds  
21 were unrated and there is nothing unusual about these bonds.  
22 This is just the laws that require people to be qualified to  
23 purchase them, that not anyone can go -- if I walked in and  
24 said I want to purchase this bond, I would have to be  
25 qualified. There is different tests they apply, and you have

I6RJGAL2

Summation - Ms. Notari

1 to look up the -- I don't want to bore you with that, but there  
2 are requirements.

3 Tim Anderson was to taken by Jason Galanis that he  
4 never even spoke to Mr. Cooney, you know, about all this  
5 paperwork was done by email, that Jason Galanis, he emailed  
6 Jason Galanis, the big boy letter and he had Mr. Cooney fill  
7 out the big boy letter. If you see the big boy letter, Mr.  
8 Cooney puts his home address, and there was questions about was  
9 there anything about like a natural person versus an  
10 institutional buyer buying these bonds. He said no, there was  
11 nothing unusual about that.

12 He relied solely on Jason Galanis, and the government  
13 brought out this testimony and they said oh, you know, he was a  
14 sophisticated buyer because he had his money managed at City  
15 National Bank, and City National Bank was an experienced  
16 institution with the bond desk.

17 It is interesting that they focused on that and they  
18 just rolled over it like no, no probing, no nothing. Then  
19 later on they bring in City National Bank, and there is no  
20 evidence that City National Bank ever talked to Mr. Cooney  
21 about this bond.

22 It is just like sloppy, like just put it out there.  
23 It doesn't matter, you know, none of this matters. These guys  
24 are guilty, and Mr. Schwartz talked about the investigation,  
25 how they were -- there was just judgment very early on and

I6RJGAL2

Summation - Ms. Notari

1 there is something called confirmatory bias. Confirmatory bias  
2 is when you make a decision and then you filter the evidence  
3 based on that decision and you don't change your mind in  
4 accordance with the evidence that comes in. We see that in  
5 those cases, for example, some of the cases where people  
6 prosecute people for crimes and then --

7 MS. MERMELSTEIN: Objection, your Honor.

8 THE COURT: I don't think this is --

9 MS. NOTARI: Confirmatory bias?

10 MS. MERMELSTEIN: Objection, your Honor.

11 THE COURT: Let's just move on.

12 MS. NOTARI: Okay. In this case, the investigation  
13 happened, Mr. Schwartz talked about that, and when your  
14 cooperators come in and say I have nothing to say about this  
15 person, I had no knowledge, I have no documents, which is what  
16 Mr. Dunkerley said, at what point do you decide how far are you  
17 going to stretch to grasp unrelated evidence to prove a person  
18 where it just doesn't make sense.

19 We can only, you know, you can go back and think about  
20 why those things happened, you know? It is not really  
21 appropriate for us to put that into your head, but I think Mr.  
22 Schwartz talked about that yesterday, you know, and sometimes,  
23 you know, prosecutors, there is other stuff out there that, you  
24 know, that --

25 MS. MERMELSTEIN: Objection, your Honor.

I6RJGAL2

Summation - Ms. Notari

1 THE COURT: Let's focus on this case.

2 MS. NOTARI: Okay. So Mr. Cooney, his basis for  
3 qualifying him as a sophisticated investor was based solely on  
4 his conversation with Jason Galanis, and basically  
5 sophisticated investors, he agreed is someone that the  
6 qualification is that they not only have to understand the risk  
7 of the bond but has to fit within their investment profile.

8 In other words, like if you don't have an investment  
9 profile to be able to buy this, then you wouldn't be qualified.  
10 There was no due diligence on that issue for Mr. Tim Anderson.  
11 I think that there was due diligence, but here he just was so  
12 convinced by Jason Galanis, and it is a testament, it is  
13 important because, for two reasons: One, because the  
14 government, they want you to believe Mr. Cooney was a  
15 sophisticated investor when it is not true.

16 The second reason is that, as I said, that Tim  
17 Anderson was believed. Like this is what trust -- Mr. Cooney,  
18 the fact that Mr. Cooney had no suspicion that he believed  
19 everything was according to plan was based on the fact that  
20 these law firms were completely doing their due diligence and  
21 that this bond was, everything was fine and all the documents.

22 You look at the email, and it just was nobody could  
23 have known that Jason Galanis, you know, he had access to this  
24 money, that nobody could have known that. The cooperators very  
25 specifically said that they were controlled and they weren't

I6RJGAL2

Summation - Ms. Notari

1 allowed to have access and they weren't allowed to talk to  
2 people. It just wouldn't make sense that this house of cards  
3 would fall if he told people because these are not the kind of  
4 people that would be involved in this.

5 They didn't have to be involved in this. There was no  
6 motive. Mr. Cooney was, was successful, he had a perfect  
7 credit rating. You heard Steve Shapiro testify and he was a  
8 long-standing customer of City National Bank. His star was on  
9 the rise, he was part of Burnham, and I think the financial  
10 conglomeration, there is evidence that it would have been, you  
11 know, I mean this was something that only fell apart because of  
12 this case and Jason Galanis.

13 I think it is also important because it sort of starts  
14 to, you know, in terms of Mr. Cooney, it sort of, you see how  
15 Jason Galanis is like, you know, very controlling and he  
16 controls Tim Anderson and he tries to control every aspect of  
17 what is going on. (Pause) Just checking my notes.

18 So if we go to Government Exhibit 2027, you can see  
19 that this is the distribution list, and you have heard about  
20 this, you have seen it before during the trial. This was just  
21 a final draft of all the important players in this bond, and  
22 you can clearly see that Mr. Cooney is not mentioned or  
23 featured anywhere, but that he was not a part of putting this  
24 bond together.

25 If we can go to the next -- no. 402. I included

I6RJGAL2

Summation - Ms. Notari

1 these exhibits, and again you can see in these exhibits they're  
2 both government and defense exhibit stickers, and the  
3 importance of these exhibits is that, you know, you can say  
4 that there was testimony that but for the fact that Mr. Cooney  
5 reached out to Tim Anderson, that he probably never would have  
6 like had any correspondence with him because the only  
7 correspondence he had with Mr. Cooney was about his purchase of  
8 the bonds and about the follow-up on purchasing the bonds.

9 Mr. Cooney was an open, an open a book. If you look  
10 at these emails, there is so many people, there is this wire  
11 called instructions to purchase the Wakpamni bonds and you can  
12 see Matthew Fillman, Alexis Gluckman, Tim Anderson in  
13 Government's 402. These are the people, his business advisers  
14 who are helping him purchase the bond, and they're included in  
15 every aspect, every transaction. He includes them, and he --  
16 again Alexis planning on wiring funds on Monday and buying the  
17 bonds.

18 The government has this theory they weren't  
19 Mr. Cooney's bonds and he never owned the bonds. You can see  
20 in all these emails, you know, he always, always, there is no  
21 evidence, you know, and we'll get to Steve Shapiro, but these  
22 are his bonds. He is always saying my bonds, and he is  
23 clearly, you know, this notion that this is just, it is just  
24 mud on the walls and it is a distraction.

25 I think it is important for you when you look at these

I6RJGAL2

Summation - Ms. Notari

1 emails to really see how everything he did was completely, his  
2 hands were held by his business managers and he reached out to  
3 Tim Anderson for direction. Again, you know, profile, like if  
4 you're a fraudster, you're not reaching out to people like to  
5 bring everyone into your business because if someone, it is  
6 just common sense, like you don't do that. That is not how  
7 Hugh Dunkerley carried on, that is not how Francisco Martin,  
8 that is not how people who are committing crimes lead their  
9 lives.

10 Now we get to Hugh Dunkerley. Now, Hugh Dunkerley, he  
11 pled guilty and he received a cooperation agreement, and you  
12 heard that he is facing a sentence, with a cumulative sentence,  
13 he said, of approximately 70 years, and I think, you know, if  
14 you're to ask for a read-back of evidence, I think that this is  
15 a person who provides information, although he doesn't provide  
16 any information about Mr. Cooney.

17 This is just when he testified, I did a recap of his  
18 testimony, and I said the questions -- you testified that you  
19 saw -- working for Jason Galanis for about two or three years,  
20 I think he said. You said in your life basically you've only  
21 met Mr. Cooney on two or three times on social settings?

22 Correct. You testified Mr. Cooney was a great guy?

23 Absolutely. You never, you were never together at 1920 Bel  
24 Air? Correct.

25 He testified that it was not a common occurrence for

I6RJGAL2

Summation - Ms. Notari

1 you to email Mr. Cooney, correct? Correct.

2 In fact, you had difficulty remembering even one email  
3 you had with him? Yes.

4 You said you never spoke to Mr. Cooney about the WLCC  
5 bonds? Never.

6 And you testified that Jason Galanis lied to you,  
7 correct? Yes.

8 You testified that Jason Galanis lied to you, correct?  
9 Yes.

10 And you knew for a fact he was consistent lying to  
11 people? Yes.

12 You knew for a fact fact that he was sending out  
13 fraudulent comments? Yes. He ordered fake documents to be  
14 sent to the government? Yes. There were times when he created  
15 fake companies, Ballybunion and Las Vegas is not a real  
16 company? Correct. On many occasions you had no idea what he  
17 was telling other people? Correct.

18 That is the government's chief cooperator, that there  
19 is no evidence against Mr. Cooney, and he never spoke to Mr.  
20 Cooney about the tribal bonds. He said he had no documents  
21 implicating Mr. Cooney about the tribal bond.

22 I say he is an important witness because it is through  
23 him that we first see into the dark world of Jason Galanis. I  
24 talked about it earlier, there were two worlds. There is the  
25 underworld, the dark world where Francisco Martin and Dunkerley



I6RJGAL2

Summation - Ms. Notari

1 and Hirst and strategizing and creating false documents and  
2 false companies, and we heard testimony about the secret  
3 communication. Mr. Cooney is not part of any of that. There  
4 is no evidence that he was part of any of that. There is no  
5 WICKR, there is no white board sessions. He was not part of  
6 any of that.

7 He was strategically kept apart from these people, and  
8 when I say strategically, the time that they were together were  
9 always social settings where Jason Galanis was present.

10 You know, through his testimony -- again I reiterate  
11 that -- Hugh Dunkerley, he testified not only to creating false  
12 documents, backdating of documents and creating of false  
13 companies, there was testimony that he did not -- this is very  
14 important, and Mr. Schwartz went into this briefly yesterday,  
15 but you need to hear it again, that he had no visibility into  
16 what Jason Galanis was doing with the proceeds of the bonds and  
17 what he planned on doing.

18 He said he thought the investors in the bond would be  
19 paid back when Wealth Assurance became Valor, but that never  
20 happened. He had no idea the money from the first issuance of  
21 the bond was recirculated to pay for the second and third  
22 issuance of the bond. He was part of that close world, and he  
23 didn't know the money that Jason Galanis, that was  
24 recirculated, and this is the government's like chart of this  
25 money being recirculated, and he had no idea. If he had no

I6RJGAL2

Summation - Ms. Notari

1 idea, how would Mr. Cooney have an idea? He didn't.

2 Again, there was -- now, Mr. Schwartz talked about the  
3 bank statements, and we're going to talk about that a little  
4 bit later. This notion that Jason Galanis, you know, because  
5 you have a bank statement, that it is somehow some indication  
6 you have visibility into what is going on, and Mr. Cooney, and  
7 there is evidence of this, that we put in the financial chart,  
8 you know, and they had business dealings together.

9 There is no question about that, you know?

10 Mr. Cooney at one point, they rented a New York  
11 corporate apartment, and Mr. Cooney had a perfect credit  
12 rating, so he would -- it is not a crime. He would have him  
13 take charge of that, and there is no evidence that this was a  
14 crime. It is just mud on the walls. They put in emails of  
15 this corporate rental and they're trying to get you to focus  
16 on, you know, anything they can get you to focus on to distract  
17 you from the fact there is no evidence in this case.

18 So so we know that Hugh Dunkerley was, in the fall of  
19 2015, there is the SEC investigation and they go into high gear  
20 to start creating these false documents. Again Mr. Cooney was  
21 not part of that. Creating false identities, false emails,  
22 false business accounts, manufacturing false documents,  
23 backdating them, notarizing them, this is just, you know,  
24 whatever fraud that one can commit in terms of, you know, this  
25 nature and Jason Galanis was a part of, and there is no

I6RJGAL2

Summation - Ms. Notari

1 evidence that Mr. Cooney was a part of that.

2 Now, one of the things that is utterly shocking in  
3 this case is the deception on the part of the government, and  
4 you know, you heard, there has been testimony that Mr. Cooney  
5 received \$3.8 million, and the money, the government's chart  
6 showed the money was wired to him and the money went to Camden  
7 Escrow and the money went to the Wolff Law Firm.

8 The shocking part is that when Hugh Dunkerley  
9 testified, he was asked by the government, there was an  
10 electronic withdrawal wired to Bevan Cooney for \$3.89 million.  
11 At that time did you have any understanding when he made that  
12 transfer, understanding why that money was going out? No, I  
13 did not.

14 So the government left you with the belief, there was  
15 no follow-up on that, they left you with the belief that Hugh  
16 Dunkerley had no idea why that money was wired to Mr. Cooney,  
17 but then on cross-examination -- and if we can go to 3065 --  
18 yeah, 3056, we start probing, and I say to Mr. Dunkerley, well,  
19 isn't it true that, you know, have you reviewed this email --  
20 isn't it true there was money wired, and you're on all these  
21 email?

22 This is Maria Santana, and she works for Camden  
23 Escrow, and on these email, you know, Hugh Dunkerley is on  
24 these email and it is a very clear email thread where again Mr.  
25 Dunkerley is there and talks about here on November 13th.

I6RJGAL2

Summation - Ms. Notari

1           Now, if we look at the money chart, the wire came to  
2           Mr. Cooney's account on November 10th, and there was \$3.10  
3           million, and a hundred thousand dollars and almost the next day  
4           the wire was wired into Camden Escrow.

5           (Continued on next page)

I6R7GAL3

Summation - Ms. Notari

1 MS. NOTARI: And so these documents are a summary of  
2 what happened with this transaction. But the government wants  
3 you to believe -- first of all, they didn't want you to see  
4 this e-mail, because they never asked Hugh Dunkerley about it.

5 And if you can just go to the next portion, later on  
6 in cross-examination I said to him, I said,

7 "Q. Defense Exhibit, you know, 3063, 3062, 3056A, these are  
8 all e-mails between you and Maria Santana from Camden Realty,  
9 correct? These are e-mails that relate to real estate  
10 transaction involving you as the managing member of 1920 Bel  
11 Air and Maria Santana from Camden Escrow."

12 Now, if you remember his testimony, he was the  
13 managing member. Remember the visual. At some point I gave  
14 him like a lot of real estate documents and he went through  
15 them, well, that was that moment in the trial. And so he  
16 testified over two days.

17 "Q. And so in this case your e-mail that's reflected in these  
18 documents are consistently hugh@dunkerleyus?

19 "A. Yes.

20 "Q. As far as this case, were all of your e-mail produced to  
21 the government?

22 "A. Yes.

23 "Q. And at any time did the government during their 20  
24 preparation session with you review these e-mails with you?

25 "A. I believe so, yes.

I6R7GAL3

Summation - Ms. Notari

1 "Q. You believe that you discussed them?

2 "A. I certainly looked at a variety of exhibits that were  
3 going to come up in this case."

4 So, there are one of two options. Either they didn't  
5 review them. They clearly had them because after they  
6 testified they later moved them into evidence. And. You know,  
7 so what are we trying -- what can we draw from that?

8 You know, they did not want you to know about this  
9 e-mail.

10 Can you go back to the other exhibits, please.

11 They did not want you to know that this was a  
12 legitimate real estate transaction. And, you know, I want to  
13 go through the evidence that this was legitimate.

14 You know, first of all, it never happened. OK? So  
15 the transaction was eventually canceled. And Government  
16 Exhibit 3062 is "Please find for subject property cancellation  
17 instructions." So, the money that was wired to Camden Escrow  
18 was eventually canceled, and Mr. Cooney did not keep that  
19 money.

20 And actually Government Exhibit 3272 is an e-mail  
21 where he is e-mailing Fulton Management and saying that  
22 "Vanessa found this file for my taxes last year, Thorsdale  
23 loaned me this property for a short period of time. The money  
24 went through my CNB account and to Camden Escrow in Beverly  
25 Hills. It was a failed real estate transaction."

I6R7GAL3

Summation - Ms. Notari

1 OK? But before we get to that point where it didn't  
2 happen, a lot of stuff happened in between, and if you look at  
3 these documents --

4 Can you go to the next.

5 Again you have to pay attention to the dates, because  
6 what is happening -- what Hugh Dunkerley testified was that, if  
7 you recall -- I asked him whether Jason Galanis was doing home  
8 improvements, and we introduced into evidence -- you actually  
9 saw yesterday Mr. Schwartz showed you the two photos of the  
10 kitchen and the dining room, and I said, you know, were these  
11 renovated, and Jason Galanis had a hard money loan, and he was  
12 paying a high interest rate, and he was paying a lot of money  
13 in monthly expenses, and, you know, Hugh Dunkerley was under  
14 the belief that this was a refi, that Mr. Cooney was going to  
15 help him refinance the property, but he absolutely -- you know,  
16 there was not a shred of evidence from him that this was a  
17 fraud. You know, he absolutely backed up the fact that his  
18 understanding from Jason Galanis was that this was a refi.

19 Now, again I specifically said: Was your information  
20 from Jason Galanis? Yes. Because he was -- you know, there  
21 was not like a lot of communication allowed. You know, the  
22 e-mails went through Maria.

23 But separate and apart from that, all of the  
24 surrounding, you know, evidence -- which you could look at --  
25 is that Mr. Cooney was trying to get a loan for -- he was

I6R7GAL3

Summation - Ms. Notari

1 trying to get a loan for the property. That never happened; he  
2 was not able to do so. There is wires coming in and wires  
3 coming out. He is giving -- you know, the seminal date is  
4 November 2014. And you will see like a lot of -- this is  
5 important.

6 Can you go back to the other exhibit.

7 Soo, if you look at -- you have to be a detective.  
8 That's what I mean, I'm trying to give you the tools to go back  
9 and be a detective. But Mark Cohen, Cohen Financial Group --

10 THE COURT: Ms. Notari, I think we may want to take  
11 bathroom break. About how much longer do you have?

12 MS. NOTARI: Oh, a lot.

13 THE COURT: OK. So why don't we take a short break  
14 now. All right? Thank you.

15 Just remember not to discuss the case. Thank you.

16 (Continued on next page)



I6R7GAL3

Summation - Ms. Notari

1 (Jury not present)

2 THE COURT: First of all, sorry to interrupt you. One  
3 of the jurors was indicating that she -- I'm just going --  
4 everyone can be seated. I'm just going to note a few things  
5 about the charge, but I'm starting to print them.

6 I did take out the word "good" in referring to Mr.  
7 Archer's reputation for honesty and trustworthiness, because I  
8 think it's very clear that it was a positive reputation.

9 I did take out the language in the good faith section,  
10 that the defendant is acting in good faith if he was actively  
11 deceived by another individual. I think it's abundantly clear  
12 from the instruction that the doctrine would apply in such a  
13 scenario; and I had previously decided not to instruct the jury  
14 on the defense theory of the case.

15 With respect to conscious avoidance, I did add in a  
16 line as requested. I added in a line after the paragraph that  
17 says "With respect to the conspiracy charged in Count One..." I  
18 added a line that says, "Similarly with respect to the  
19 substantive securities fraud charged in Count Two, conscious  
20 avoidance can only go to knowledge and cannot be used as a  
21 substitute for finding that the defendant you are considering  
22 acted willfully or with an intent to defraud."

23 I added in your point about audio video recordings,  
24 that they can be replayed in the courtroom, and then really  
25 minor things that we discussed earlier, and then I found a typo

I6R7GAL3

Summation - Ms. Notari

1 that said the wrong count. But that's it, so I am starting to  
2 print them now.

3 MR. TOUGER: What's the schedule for the day?

4 THE COURT: For the day?

5 How much longer do you have, Ms. Notari?

6 MS. NOTARI: I can't believe it's been two --

7 THE COURT: It's been almost two hours.

8 MS. NOTARI: Well, I still have CNB. I still have --  
9 I'll try and move it along. I think I have another hour.

10 THE COURT: Another hour? All right. So, Ms. Notari  
11 will finish. Then we will take a short break, and the  
12 government will do its rebuttal, and then we will take lunch,  
13 and I will charge after lunch, OK, given the time. Thank you.

14 (Recess)

15 (Continued on next page)

I6R7GAL3

Summation - Ms. Notari

1 (Jury present)

2 THE COURT: Everyone can be seated.

3 MS. NOTARI: Welcome back. So I think when we last  
4 left off I was talking about Hugh Dunkerley and the fact that  
5 the government did not bring out the fact that he had been  
6 involved in wiring \$3.8 million, plus another \$100,000 to  
7 Mr. Cooney, and this went to Camden Escrow, and that it was  
8 completely documented, and you will be able to see the exhibits  
9 of this. And the supporting evidence of this was a real estate  
10 transaction was Dunkerley's testimony that Jason Galanis, who  
11 was doing home improvements. And again I said he testified  
12 that his basis for him saying that he thought it was a refi and  
13 not a sale was his conversations with Jason Galanis. And we  
14 understand that there was this control in who he was able to  
15 speak to.

16 But certainly the e-mails -- and if we look at these  
17 e-mails -- and around the time this is all happening, from the  
18 time there was the wire until the escrow was canceled, there is  
19 all this flurry of trying to get a loan. Mr. Cooney was trying  
20 to get a loan, and the intent was -- and again you see, you  
21 know, that Mr. Cooney has good credit, and he was going to  
22 purchase this in an LLC, but it never happened.

23 And there was a little bit of confusion about that  
24 with Hugh Dunkerley, and I think a lot of it was just a  
25 misunderstanding of when I said failed transaction, and he

I6R7GAL3

Summation - Ms. Notari

1 said, yes and then no, but I think he thought that something  
2 did happen. Then when I confronted him with all the real  
3 estate records -- and you are going to have those; you are  
4 going to get to see that 1920 Bel Air is owned in an LLC, and  
5 it's very complicated; there is a lot of complicated  
6 transactions; but Mr. Cooney is not mentioned anywhere in those  
7 documents; and he never purchased that property; and he never  
8 kept a single cent of that money.

9 And the money, as the government indicates in their  
10 summary charts -- if you want to go -- this was the  
11 government's summary chart, and it shows the money went from  
12 Bevan Cooney to Camden Escrow.

13 Now, these charts, I don't know when these charts were  
14 made, but certainly it says Camden Escrow, but they never --  
15 they never brought out testimony from Hugh Dunkerley, who  
16 actually participated in the wiring of the money to Camden  
17 Escrow as part of that deal. And you would think he was a key  
18 witness you would want to hear from, and you would want to hear  
19 testimony about his involvement in that because he was -- he  
20 was involved in it; I mean he was on all those e-mails.

21 So, the government is trying to be deceptive here.  
22 OK? They just wanted you to know that the money was going to  
23 go wired into -- they just wanted it to be very, you know,  
24 sketchy, but it's not.

25 In fact, if you go to the next exhibit, this is

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Summation - Ms. Notari

1 actually what I was talking about earlier about state of mind.  
2 And this is an e-mail from Jason Galanis to Bevan Cooney, and  
3 it's August 13, 2013. And again you're going to see on the  
4 summary chart, you know -- they were -- they had -- before the  
5 WLCC bond, they had deals together, and they were involved in  
6 business deals. And here it says "Coon, the wiring  
7 instructions are on the second page. Thank you so much for  
8 handling this for us. The real estate proceeds will pay it  
9 off, but thank you for taking the shot again."

10 This is a very telling e-mail, because clearly it  
11 says, you know, the real estate proceeds will pay it off, and  
12 which was in Mr. Cooney's mind all along there was going to  
13 be -- you know, they were making home improvements, and he was  
14 going to buy this property. He never could get the loan, and  
15 it has nothing to do with the bond, and he had no way of  
16 knowing, you know.

17 I cannot say here before you what Jason Galanis, but  
18 Jason Galanis told Hugh Dunkerley that this was a real estate  
19 transaction. And certainly the government's chief cooperator  
20 testified that this was a real estate transaction, and he never  
21 said, you know -- so, again we're just -- we're just -- we're  
22 just throwing mud on the walls. OK? This was my client,  
23 absolutely what he believed.

24 And Oxford Metrica? This is Oxford Metrica, and you  
25 heard about Oxford Metrica; I told you about it earlier. But

I6R7GAL3

Summation - Ms. Notari

1 Dr. Rory Knight, the Dean of Oxford University in the UK, who  
2 owned Oxford Metrica, my client was paying this bill. OK? He  
3 was paying this bill for Dr. Rory Knight's expenses, because  
4 this was part of, you know -- I'm not sure if he was the  
5 director at this point of Wealth Assurance, the board of  
6 directors, but in any event, it's important because it shows  
7 Mr. Cooney, and he is actually sending Jason Galanis I think  
8 this was \$35,000.

9 This is not a man -- you know, this was -- he was --  
10 he was -- you know, he was used and he was -- you know, the  
11 government's theory -- and you're go to go see on their money  
12 flow chart that they don't include -- they don't include any of  
13 the money in their money chart that Mr. Cooney sent Jason  
14 Galanis. You know, it's a very, very narrow window of what  
15 they think is relevant. OK?

16 But this is -- this is -- they poo poo the fact  
17 that -- and you're going to see in a few minutes that  
18 Mr. Cooney, every transaction that happened -- and again this  
19 is consistent with his credit, his wiring, his relationship  
20 with his business managers, that everything was documented, and  
21 any time he did anything, you know, there was a loan.

22 And if you look at -- if you look at his -- the  
23 records from Fulton, and you match it up, it all matches up.  
24 And so there was money going back and forth, OK, which is  
25 consistent with a legitimate business relationship in his mind.

I6R7GAL3

Summation - Ms. Notari

1 OK? He had no reason to believe that what was going on --  
2 which was really just the misappropriation of the money -- he  
3 had no way to know that. But again you should look back at  
4 that, and you will see Oxford Metrica, and you will see a lot  
5 more back in the jury room. These are just highlights of some  
6 of the evidence that you should be paying attention to.

7 So, again the government's -- any argument by them --

8 And again if you could just scroll ahead, Mr. Hassen.

9 OK. This is another -- the government put this --  
10 again, this is another example of how they're trying to spin  
11 the evidence. They put this -- they talked about this  
12 yesterday, and they said my business partner Jason Galanis will  
13 be coordinating all of that.

14 Look, this e-mail says, "Alexis, we are getting a  
15 corporate apartment in New York. Sent you the details. I am  
16 not handling any of the financial side of the lease. My  
17 business partner Jason Galanis will be coordinating all of  
18 that. All we need to do is get tax returns, bank statements  
19 together. Please e-mail Elaine at Marmot for a reference  
20 letter as well. Thanks."

21 So, this is just the nature of their relationship, and  
22 Mr. Cooney -- there is nothing illegal about this. I don't  
23 know why this is government's -- I don't know why this is so  
24 important, but apparently it's just part of the mud they are  
25 trying to throw at Mr. Cooney, and it shouldn't stick.

I6R7GAL3

Summation - Ms. Notari

1 If we can go to the next e-mail, the next exhibit.

2 Again this is more. This is another Government  
3 exhibit, and they're going to -- I am not sure what they're  
4 going to argue here. They're going to have another chance to  
5 speak to you, but this is -- it was a corporate rental, and  
6 there is references in the e-mails. This was a corporate  
7 rental.

8 And you can see that the intended -- you know, Jason  
9 Galanis was living in California, and there were certain people  
10 who were living in New York, and Burnham was in New York, and  
11 so at some point they made the decision to rent an apartment.  
12 You know, it was a corporate rental, and that was this, but  
13 again it has nothing to do with the bond; it's just mud on the  
14 walls.

15 Can you go to the next one.

16 OK. The next big distraction in this case is City  
17 National Bank. OK? Now, it's hard for me to even conjure up  
18 exactly what the government's theory is on this, because I  
19 think their theory is that Mr. Cooney obtained the WLCC -- he  
20 purchased the bonds because he was trying to get real estate  
21 loans.

22 I told you earlier that the nature of Mr. Cooney's  
23 work is that he doesn't -- he is not a wage earner, and  
24 sometimes there are periods of time where he doesn't get steady  
25 pay and so he gets a loan. And he had a very long-standing



I6R7GAL3

Summation - Ms. Notari

1 relationship with City National Bank, and Fulton & Meyer, and  
2 that was -- it was very clear when Steve Shapiro testified.  
3 Steve Shapiro was the banker from City National Bank. And what  
4 is important is that, you know, the government -- so it's  
5 important to understand the timeline.

6 Now, first this exhibit is important because it shows  
7 that City National Bank was -- Matthew Fillman had a  
8 long-standing relationship with City National Bank, and in  
9 particular Steve Shapiro. He testified they knew each other  
10 for 16 years; they worked together; Matthew Fillman had  
11 previously worked at City National Bank; and before that they  
12 worked at Wells Fargo together. And Steve Shapiro said they  
13 were very good friends and they had worked together and they  
14 had a very cordial relationship, and he talked about the  
15 reputation of Fulton & Meyer.

16 So, if there is any belief out there that maybe this  
17 is some fly-by-night accounting firm, business managers, that  
18 was completely -- that was, you know, squashed by Steve Shapiro  
19 who actually touted the credibility of Fulton, and Eric Fulton  
20 who was the owner and he eventually became the sole owner,  
21 became Fulton Management. There were a lot of different names,  
22 Matthew Fillman, Alexis Gluckman.

23 So here we have -- the evidence is very clear that  
24 City National Bank was involved with Mr. Cooney's bonds, the  
25 WLCC bonds, from the very beginning. Well, we heard the

I6R7GAL3

Summation - Ms. Notari

1 testimony from Tim Anderson that said he was qualified as a  
2 sophisticated investor based on the fact that City National  
3 Bank had a bond desk. But separate and apart from that,  
4 City -- when Mr. Cooney purchased his bond, it was physically  
5 delivered to him. Because you heard testimony in this trial  
6 that in order for these bonds to be electronically purchased,  
7 they have to be entered into this DTC system, and there was an  
8 effort to do that but it never happened, and so the bonds were  
9 physically delivered to Mr. Cooney. And the first thing he  
10 does when he gets these bonds is he contacts Tim Anderson, what  
11 do I do with the bonds. Again, consistent with an innocent  
12 mind. There is no, you know, trying to -- if he knew this was  
13 a sham bond, maybe he would -- I mean, you know, it's just not  
14 supported by the evidence.

15 So he e-mails -- here again we see how he brings  
16 everyone -- Matthew, there are all of these different people on  
17 this e-mail, and Steve Shapiro is actually on this e-mail. And  
18 this is when Mr. Cooney was trying to get City National Bank to  
19 take custody of the bonds because he wanted to deposit the  
20 bonds into City National Bank.

21 And to show Mr. Cooney's sophistication, he takes an  
22 iPhone shot of the phone, sent from my iPhone. You can see  
23 that in almost -- you know, it's always --

24 Can you go to the next one.

25 So, now the government, they are focusing on this

I6R7GAL3

Summation - Ms. Notari

1 financial statements that Mr. Cooney filled out. Now, in  
2 January of 2015 Mr. Cooney applied for a line of credit, and at  
3 that point Fulton & Meyer and --

4 Can you go back for a minute.

5 Fulton & Meyer -- and the government establishes --  
6 this is actually Ms. Mermelstein questioning Matthew -- I'm  
7 sorry -- Steve Shapiro, and she specifically asks him:

8 "Q. Who generally was your point of contact with respect to  
9 the loan that Mr. Cooney sought?

10 "A. Fulton Management was, and their representative Matthew  
11 Fillman, Eric Fulton and others.

12 "Q. And did Mr. Fillman act as Cooney's authorized agent in  
13 the communications seeking the loan?

14 "A. Yes, he did."

15 OK. Can you go to the next slide.

16 So, in January of 2015 Matthew Fillman sends -- and  
17 actually it was in February -- Matthew Fillman sends Steve  
18 Shapiro a financial statement, and in that financial statement  
19 it has -- and I think it's Government's Exhibits 406 -- and you  
20 will be able to look at it. It basically puts forward  
21 Mr. Cooney's assets, and it attaches at that point a snapshot  
22 of his Wakpamni bonds. And I think according to that snapshot  
23 at that point in February his bonds are worth about \$5.5  
24 million. And it also includes a statement of the stock  
25 Flikmedia that he owns which is worth about \$2 million.

I6R7GAL3

Summation - Ms. Notari

1 Now it's important for you to understand the course of  
2 dealings between Steve Shapiro. He testifies that he did not  
3 really ever have a conversation with Mr. Cooney until January  
4 of 2016. And I will get to that.

5 The course of dealings with this first \$100,000 line  
6 of credit is completely with Matthew Fillman. And there are  
7 e-mails going back and forth, and Matthew Fillman is his  
8 authorized agent, and he gives him -- you know, this  
9 application is forwarded to City National Bank.

10 And it's fair to say that if you have an authorized  
11 agent negotiating your loan, and they know every aspect of your  
12 finances -- and certainly City National Bank has almost every  
13 account that Mr. Cooney has. This is not as if he walked into  
14 a branch and said, hey, I need a loan. These people know his  
15 finances; they have been dealing with him for years and years  
16 and years. You're going to see the bank records that go back.  
17 These are his personal bankers.

18 And so he gets the loan. And it's very clear when I  
19 asked Steve Shapiro, I said this is an unsecured loan -- which  
20 means there is no collateral -- and Steve Shapiro says that the  
21 bonds -- the bonds are not -- based on their credit rules, the  
22 bonds would not qualify to be collateral on a loan like this.

23 And so -- and \$100,000 line of credit, given  
24 Mr. Cooney's earnings, it's not a big risk. He had previously  
25 obtained loans, and Mr. Shapiro said he previously obtained a

I6R7GAL3

Summation - Ms. Notari

1 \$250,000 loan I think in 2012. There was never a problem with  
2 any loan he had before; he was considered to be a long-standing  
3 good client.

4 So if you go to 3755. Now, this has a blue sticker  
5 because the government never -- they didn't put this into  
6 evidence. They talked about it, but they never put this into  
7 evidence. Because again they're trying to confuse you. You  
8 know, this is a confusing transaction because there were  
9 actually two loans in a six month period, and there was only  
10 one financial statement.

11 So, there was one financial statement, and it was  
12 given to City National Bank, and Matthew Fillman was the  
13 authorized agent for that loan, and this was the actual  
14 promissory note for the \$100,000 line of credit. And you can  
15 see that it's a one year loan, and it commences on February 17,  
16 2015; it expires February 17, 2016; and that went into place.

17 And this, the financial statement that is the focus  
18 here, was filled out in connection with this loan, and there  
19 was disclosure about the bonds. And Ms. Mermelstein said, oh,  
20 he never filled out that he had a loan on this financial  
21 statement. But again --

22 Can you go to Alexis, the loan.

23 OK, right in the beginning. OK. This is important  
24 because you see that there is full disclosure. This is October  
25 8, 2014, this is when Mr. Cooney buys his bonds, huge wire,

I6R7GAL3

Summation - Ms. Notari

1 book as loan. And you are going to see later on there was a  
2 loan agreement.

3 Fulton & Meyer knew everything that was going on with  
4 Mr. Cooney. OK? And they filled out the paperwork. And Steve  
5 Shapiro -- again, the bond was never -- it was never -- it was  
6 an unsecured loan, and, you know, they -- it was just -- this  
7 financial statement was just -- everything was out in the open,  
8 and it was never -- you know, it was just understood. They  
9 knew his finances. They had him fill out -- and actually we  
10 don't even know -- there is -- Steve Shapiro said that he  
11 doesn't even know who filled it out. And actually Fulton,  
12 there is e-mails -- which you will see when you go back into  
13 the jury room -- that Fulton & Meyer had a power of attorney,  
14 and they just handled all of his work.

15 So, this notion that Mr. Cooney was trying to hide the  
16 fact that he had a loan, he was hiding, you know, it's just a  
17 lot of mud on the walls.

18 OK. So what happens after that? So what happens  
19 after that is that Mr. Cooney, at some point he -- OK. So at  
20 some point there is evidence that you've heard about this  
21 transfer of -- Mr. Cooney transferred his bonds to Bonwick  
22 Capital. And it's a little bit confusing because of the  
23 timeline, but essentially -- and everyone is kind of  
24 encouraging me to go faster so I'm going to try to go faster.

25 But essentially what happened was the evidence, the

I6R7GAL3

Summation - Ms. Notari

1 e-mails -- and I'm going to go through this; I will show you  
2 some exhibits -- that Mr. Cooney was trying to sell his bond.

3 Now, the government is trying to put forward this  
4 theory that Mr. Cooney got these bonds, and he never -- he got  
5 them for the purpose of getting loans, and they were never his  
6 bonds, and he never intended --

7 You know, the theory is kind of all over the place,  
8 but absolutely Mr. Cooney bought these bonds, and he bought  
9 them with the loan -- and I'm going to talk about that toward  
10 the end -- but his intention was always to sell the bonds, you  
11 know, to an institutional buyer. And he was trying to do that.  
12 He was trying to sell the bonds to an institutional buyer.

13 And you will see in a few minutes that during this  
14 time period he's going through like a bad money time, and  
15 that's why he is trying to get these loans, and he is trying to  
16 sell the bonds.

17 But he owns the bonds, and so he's clearly not trying  
18 to hide the fact that he owns the bonds. But at some point he  
19 is trying to get an institutional buyer. And there is talk at  
20 Burnham -- you know, they're trying to get these bonds into a  
21 DTC system which makes it easier to sell to an institutional  
22 buyer, but at some point the bonds are transferred to Bonwick  
23 Capital. And this was not something -- this was part of a  
24 decision that was made with Burnham and Andrew Godfrey and  
25 Devin Wicker. You heard evidence about Bonwick Capital that

I6R7GAL3

Summation - Ms. Notari

1 Burnham acquired Bonwick Capital because Bonwick Capital was --  
2 they were hoping to get into the business to further their  
3 business in mutual bonds. And Bonwick had an expertise in  
4 this, and that was the reason for acquiring Bonwick Capital.  
5 So Bonwick Capital --

6 This was not something that Mr. Cooney was involved  
7 with. You know, he had a lot of people on all sides advising  
8 him. And in order for him to transfer his bonds to Bonwick  
9 Capital there is a requirement that you medallion golden --  
10 medallion stamp your bonds, which is like a notary, and so what  
11 happens is if we look at Government Exhibit 410, on April 24,  
12 Alexis Gluckman --

13 Do we have a close up? April 24.

14 So Alexis Gluckman, she contacts Steve Shapiro and she  
15 says, Mr. Cooney, can you medallion transfer -- sign the  
16 medallion transfer his bonds. And there are all of these  
17 e-mails, and he says, sure, have him come meet me, and I will  
18 sign the medallion transfer which will allow him to transfer --  
19 basically to transfer his bond power. And so that happens on  
20 April 24, 2015.

21 Can you go to the next one.

22 And you will see in the e-mail that what happens is  
23 the paperwork is not filled out correctly. And the paperwork  
24 transfers the bond to Burnham, and so they have to do it again.

25 So what happens in Government Exhibit 412 is they



I6R7GAL3

Summation - Ms. Notari

1 call -- they call up Steve Shapiro, and they say once again can  
2 Mr. Cooney come back to your office. Because he has to -- we  
3 filled out the paperwork, and he has to transfer his Wakpamni  
4 bonds to Bonwick Capital. And so that happens on May 27. And  
5 if we could have Government Exhibit, I think it's 31 -- the  
6 bond transfer. OK.

7 So, 3162B -- now, the version that they put in front  
8 of you with Mr. Shapiro, there was just a lot of confusion  
9 about the fact that Steve Shapiro didn't know, you know, that  
10 these were the bonds and Mr. Cooney was transferring the bonds.  
11 And this happened in May of 2015.

12 So, again, January -- February he gets the \$100,000  
13 line of credit; then he transferred his bonds. Then what  
14 you're going to see next is that -- well, we will get into  
15 that -- but here specifically it says -- at the top of this is:  
16 The undersigned does hereby sell, transfer -- and this one is  
17 to Burnham Financial, but there is another document which is to  
18 Bonwick Capital, which looks just like this one, and it says \$5  
19 million. And so that's what happened. So he transfers his  
20 bonds, and Steve Shapiro is involved in that.

21 Then subsequently, Mr. Cooney, his financial situation  
22 changes, and he has a tech stock that is suddenly worth -- has  
23 increased in value, and it's worth almost -- the book value is  
24 like \$12 million, but there is a six month restriction on this  
25 stock.

I6R7GAL3

Summation - Ms. Notari

1 Can you go to 414. Actually, can we go to 411.

2 OK. So, Mr. Cooney, there is a lot of going  
3 back-and-forth, correspondence, and Matthew Fillman is  
4 contacting him, and he says this is great news, there has been  
5 a significant change in his portfolio, and he has this stock,  
6 and we're trying to get him a \$1.2 million loan to carry him.  
7 And Steve Shapiro testified that this is going to help him pay  
8 his taxes, and it's going to help him carry him through, and  
9 based on all of their vetting and determination. This is all  
10 between Matthew Fillman and Fulton Management and City National  
11 Bank, who they're close friends, they've got a long-standing  
12 relationship, and they are the ones -- Mr. Cooney is fully  
13 disclosing all of his financial -- they know everything.

14 And the reason why Mr. Cooney gets this loan is  
15 because there is a change in his financial situation and his  
16 stock is now worth a lot of money, and in six months the  
17 restriction is going to be limited -- I mean lifted -- and so  
18 he will be able to sell his stock.

19 So, what they do is they -- specifically he signs a  
20 promissory note on June 24, 2015, and it's a six month loan,  
21 matures January 1, 2016. And the reason why it's a six month  
22 loan is because it's all based on the stock that he is going to  
23 sell. It has nothing to do with the bonds, which City National  
24 Bank absolutely knows that he transferred and is now no longer  
25 available as an asset.

I6R7GAL3

Summation - Ms. Notari

1 I mean any notion that Mr. Cooney was trying to hide  
2 something is just -- is just ridiculous.

3 So now we see this loan, he signs it. And, you know,  
4 the government is trying to say that he didn't disclose -- he  
5 didn't sign another financial statement to say that he  
6 transferred the bond. This is ridiculous, because everyone was  
7 involved in this negotiation of this loan.

8 And, if anything, you know, it was upon them to have  
9 him sign his authorized banker and his personal banker to say  
10 well, you know what, now that you transferred the bond, maybe  
11 you need another financial -- whatever it is. It wasn't --  
12 he -- he had professionals doing this for him. And so if you  
13 go back to -- I just want to make clear that the basis for this  
14 six month loan, 411 --

15 OK, the basis, it says here -- this is the crappy  
16 loans are us e-mail that you've heard about. And there is  
17 joking. Which again it's important that you see this, because  
18 in this case they're trying to make such a big deal about the  
19 informality of the e-mail, you know, Mr. Cooney's e-mail, but  
20 here we see there is a joke between Matthew Fillman and Steve  
21 Shapiro: Is this Steve Shapiro who works for crappy loans are  
22 us? Please call me back. And then: Totally slammed today.  
23 What are the basics of said loan request? And then the basics  
24 of the loan are set forth: Stocks secured, single stock,  
25 NASDAQ traded, at least it's not a penny stock. IPO is

I6R7GAL3

Summation - Ms. Notari

1 yesterday. He has 500 M shares. It sets out everything.  
2 There is no mention of the bond. The bond was never a  
3 consideration in any of this.

4 And so that's it. And so he signs -- he gets the  
5 loan, and then, you know, what happens is in January of 2016  
6 now he services the loan -- which Steve Shapiro said -- and the  
7 loan -- the restriction on the stock can't be lifted, and, you  
8 know, Mr. Cooney's world starts to fall apart. The stock can't  
9 be restricted -- lifted -- and now there is a lot of back and  
10 forth about, you know, what's happening and the fact that he  
11 suddenly can't get the restriction lifted, and the loan is  
12 going into delinquent status.

13 And, you know, and at this point it's very clear that  
14 Mr. Cooney -- there is all kind of good faith dealing. There  
15 is testimony -- and you can ask for it to be read back -- but  
16 there is a period of probably a month or two months where  
17 they're going back and forth and they're trying to renegotiate  
18 the repayments of this loan. Mr. Cooney goes in with Eric  
19 Fulton, they sit down, they try to -- it's a very cordial  
20 meeting, and at that meeting Steve Shapiro and his  
21 supervisor -- and you can imagine that that was probably very  
22 stressful for Steve Shapiro. You know, at this point he has  
23 made a loan and, you know, things are not looking good for  
24 Mr. Cooney that he is going to be able to repay that loan.

25 But Mr. Cooney was completely in good faith; he was

I6R7GAL3

Summation - Ms. Notari

1 meeting with them; he was trying to renegotiate the loan. His  
2 credit was everything to him.

3 And, unfortunately, you know, this was something that  
4 was not envisioned. But to Mr. Cooney's credit -- which is  
5 again inconsistent with any notion that this was preconceived.  
6 Steve Shapiro, one is that he serviced the loan, and, two, even  
7 after, you know, all of the settlement, trying to figure this  
8 out, he paid down almost \$100,000 more toward the loan, plus  
9 you can imagine all the expenses of having to pay his business  
10 managers. And he paid \$75,000, and then he makes two more loan  
11 payments.

12 You know, so is this something a person who is  
13 committing fraud, they would pay down another \$100,000 toward  
14 the loan? I mean this is not how fraud people -- you know,  
15 they drop things and run. You know, this is not Mr. Cooney.

16 So, it's important for you to understand that any  
17 statements, you know, by Steve Shapiro -- and, you know, I  
18 don't know what the government is going to argue, that  
19 Mr. Cooney never owned his bonds and he didn't know that he --  
20 he knew -- he was part of the --

21 You know, I tried to think of an analogy of this  
22 situation, and I am spending a long time on this, because  
23 basically this is like three trials in one. You know, this is  
24 what -- this is what the government is trying to prove their  
25 case about whether he knew Jason Galanis misappropriated the

I6R7GAL3

Summation - Ms. Notari

1 bond proceeds based on the CNB loan, which has nothing to do  
2 with it. But that's what they're trying to do, so we have to  
3 have a trial within a trial about this utter nonsense, which is  
4 completely supported. Look at the timeline; look at the  
5 documents. OK? Their arguments just make no sense.

6 Now, Government Exhibit 440, I thought this was very  
7 important, because it speaks to Steve Shapiro's state of mind,  
8 and he says that now that everything has hit the fan I need to  
9 make sure this was not one of the biggest mistakes of my  
10 career.

11 So, he is very upset, you know, that this has  
12 happened, and he is just trying -- you know, he is just trying  
13 to protect himself with his supervisors and saying that, you  
14 know, Mr. Cooney didn't make disclosures. But again this  
15 was -- he had an authorized agent handling this loan. There  
16 was full disclosure, and it just makes no sense.

17 And what we know is that the stock, you know, they  
18 couldn't lift the restriction, Mr. Cooney paid down \$100,000,  
19 and, you know, his finances went into disarray.

20 And if we look at the government's -- I just want to  
21 read something to you. Ms. Mermelstein in her summation said:  
22 And you saw Government Exhibit 405. This is the personal  
23 financial statement that Cooney filled out. Do you know what  
24 he doesn't say in that statement though? It doesn't say he  
25 got a \$5 million loan. He doesn't say that the \$5 million he

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Summation - Ms. Notari

1 got from Galanis wasn't really his. Do you think that would  
2 have mattered to the bank that he was already out \$5 million?  
3 He decides to leave that out, and you can see that in what he  
4 lists as liabilities he lists --

5 I mean she -- it's just -- you know, she forgot that  
6 she brought out in her direct that he had an authorized agent  
7 negotiate this loan. And that's what you're going to see.  
8 That's what this case is about. It's about mud and  
9 distraction, and it's just not acceptable. It's not proof  
10 beyond a reasonable doubt. And Mr. Cooney, the way he led his  
11 life is evidenced in all of these documents.

12 I just want to go to the assets and liabilities. Now,  
13 I just focused on the government's argument that Mr. Cooney did  
14 not disclose, you know, the loan, he did not -- and this is --  
15 this is important because it's important for many reasons. One  
16 is that it's an asset and liability sheet which the government  
17 put in evidence without objection from us.

18 And Steve Shapiro testified that this was sent to him  
19 from Fulton & Meyer, and he understood that this was -- they're  
20 an accounting firm -- and that this was a statement of  
21 Mr. Cooney's assets and liabilities based on the records they  
22 had.

23 And in this statement you can see -- and you will be  
24 able to go and match up all the records. You can see here the  
25 investment in Burnham Financial, \$400,000. These are his

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Summation - Ms. Notari

1 assets, but they're really his loans, his outstanding loans.  
2 And you can see Wakpamni bonds \$5 million. And the  
3 liabilities -- and if you go to our summary chart of what is  
4 owed, the loans to and from Thorsdale, \$5.4 million -- and we  
5 will go into that in a minute -- but the loan is absolutely  
6 disclosed.

7 And, you know, his accountants, they -- you know, it's  
8 important that, you know, when you take things out of  
9 context -- if the government -- if Mr. Cooney was on trial for  
10 this, you know, then bring in accountants, bring in Fulton &  
11 Meyer, put on your proof.

12 This is the United States government. I mean they can  
13 bring on whoever they want to bring on. And, you know, it's  
14 not -- we have put all of these documents into evidence, but,  
15 you know, it's not the burden of proof of the defense to do  
16 anything. You know, it's like in the My Cousin Vinny snippet  
17 Marisa Tomei puts in that picture which changes the case. But  
18 in reality you shouldn't have to put on any evidence. You  
19 know, it's their burden of proof. You don't have to.

20 So if they're trying to say that this is something  
21 other than what it is, then bring on your proof. Bring it on.  
22 OK? No, they just want to throw mud on the walls and innuendo  
23 and say, oh, that, and that, and that. And that, you know, is  
24 just not acceptable.

25 So again I encourage you to look through the records



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Summation - Ms. Notari

1 and match up all of this, and you will find out that it all  
2 makes perfect sense.

3 Now, I just want to talk about Francisco Martin. I  
4 really would rather not talk about Francisco Martin, because  
5 again I think it's shocking that we wasted taxpayer money to  
6 bring this man to the United States. But just let me remind  
7 you of this person who testified.

8 So, Francisco Martin testified that he met with the  
9 government in February of 2016 at the Starbucks in West Hills,  
10 California, or Los Angeles -- I'm not exactly sure, but it's  
11 some neighborhood in the Los Angeles area -- and at that time  
12 he met with them, and then subsequently he left the United  
13 States and he only returned to talk to the government with the  
14 understanding that he would have what is called a safe passage  
15 letter, which meant that specifically during his meetings with  
16 the government he was given safe passage and they couldn't  
17 arrest him.

18 So, he would come back into the United States, or he  
19 would have telephonic conferences abroad, and he was free to  
20 live his life abroad and do whatever he wanted. And then  
21 eventually he said he would only come back, the testimony was,  
22 if he was granted immunity. And he eventually got his  
23 immunity. And he testified, you know, for it was one or two  
24 days. He lied to the government for probably the first two  
25 years he was meeting with them. And I said to him, well, when

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Summation - Ms. Notari

1 did you startling the truth? He couldn't remember. And, you  
2 know, if you go back, you can all take a bet how many "I don't  
3 knows". It was just non-stop. Everything we asked him, we  
4 refreshed him with statements he made in the past, and "I don't  
5 know, I don't know, I don't know, I don't know.

6 I don't think the government mentioned him once in  
7 their summation. The only time they mentioned him -- and let  
8 me just be clear. So, he testified that he met Mr. Cooney two  
9 times in social settings. There are no e-mails between them.  
10 And he agreed that the government reviewed many documents with  
11 him. He agreed that not one of those documents pertained to  
12 Mr. Cooney.

13 And then there was testimony that he -- he went to a  
14 celebratory lunch with Mr. Cooney and others to celebrate the  
15 bond. Again this is like -- this testimony was so compelling.  
16 You know, there is no dispute that Mr. Cooney -- that these --  
17 you know, that he knows these people, that he is friends with  
18 them.

19 Again, Jason Galanis controls these guys. You know,  
20 Francisco Martin and Hugh Dunkerley, they weren't allowed to  
21 freely -- they were only allowed to socialize like, you know,  
22 in very controlled settings. And so, you know, so Mr. Cooney  
23 goes -- but the way it's presented, as if, you know, this  
24 celebratory lunch is some type of guilt; it's like something  
25 really bad, you know. And then we get to the point, the

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Summation - Ms. Notari

1 compelling point, the evidence against Mr. Cooney from  
2 Francisco Martin is a phone call from Mr. Cooney to Francisco  
3 Martin. And we have no idea when he first told the government  
4 about this phone call.

5 And let me tell you, this is the United States  
6 government. They brought in Mr. Santos to bring in the text  
7 messages. If this was really a phone call that they thought  
8 was so important, and he told them early on, there would  
9 definitely be like some kind of evidence, some witness to say,  
10 oh, there was a phone call from Mr. Cooney.

11 So what the phone call -- if it ever happened -- was  
12 was that Mr. Cooney called him to tell him that Jason Galanis  
13 got arrested. I mean that is their evidence. That is why they  
14 flew Francisco Martin into the United States. Because they did  
15 not mention him in their closing. They did not mention him. I  
16 have to go back, but my recollection is that they never  
17 mentioned him.

18 So what can we infer from that? We can infer that as  
19 this case got closer to trial, they were desperate because they  
20 had no evidence against Mr. Cooney, and their case started to  
21 fall apart. And so, you know, Mr. Francisco Martin: What else  
22 do you remember about Mr. Cooney? I don't know. And so he  
23 comes up with, you know, I don't know how it could have  
24 happened or how the circumstances. But it's just -- it's just  
25 not acceptable. It is not evidence.

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Summation - Ms. Notari

1 And the reason why it's not acceptable is because you  
2 were deceived in how this was presented to you. OK? You were  
3 deceived and led to believe that this phone call was about the  
4 bond. You know?

5 But later on Mr. Schwartz, he asked him specifically,  
6 and he said -- well, first he says how he basically, you know,  
7 was part of this group that created false companies and created  
8 fraudulent documents and, you know, committed all of these  
9 crimes and got his letter of immunity. And, you know, that all  
10 came out very clear. Although he didn't remember a lot. But  
11 then Mr. Schwartz says:

12 "Q. Throughout the process the only person that you spoke to  
13 was Jason Galanis about the bonds, true?

14 "A. Jason Galanis, Gary Hirst and Hugh Dunkerley."

15 So after all is said and done, those are the people he  
16 talked to the bonds about. And we are just left about this  
17 impression of the phone call as if it's something more.

18 And to me, you know, it's important because it colors  
19 this case, and the deception, and what they're trying -- you  
20 know, the levels that they're willing to go to.

21 And I just remind you, you know, Mr. Martin's -- his  
22 admission that before he came to the United States to testify  
23 he posted on his Instragram accounts "It's been a long journey.  
24 No regrets."

25 And this is just really -- this is just -- based on

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Summation - Ms. Notari

1 this evidence alone, you can totally dismiss his testimony, and  
2 I submit you should do that, because it has no value in this  
3 case.

4 And based on the fact that the two cooperators in this  
5 case -- who are the only people who can talk about the bonds --  
6 say nothing about Mr. Cooney, you as jurors can return a very  
7 speedy not guilty verdict in this case, and you can say to the  
8 government: We expect more. We don't expect -- we do not  
9 expect our citizens to be brought to trial on such repugnant,  
10 scant evidence.

11 Let's go to the next, Michelle Morton. So there has  
12 been testimony Michelle Morton pled guilty, and she failed to  
13 disclose to the investors conflicts of interest. And you heard  
14 from Mr. Schwartz and from others about, you know, Atlantic  
15 Asset Management, Hughes Capital Management. And again  
16 Mr. Cooney had no contact with any of those pension fund  
17 victims or investors. He had nothing to do with that; he was a  
18 passive investor.

19 But again this evidence is important, because on March  
20 5, 2015 -- which again I think the second tranche of bonds  
21 ended -- I'm sorry -- on October 29, 2014 already two tranches  
22 had been completed, and now we're in March 5, 2015, and she  
23 says, who is Bevan again? She doesn't even remember. She  
24 doesn't even know who he is.

25 So this is the version of this text message between

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Summation - Ms. Notari

1 Michelle Morton and Jason Galanis that the government has  
2 submitted in their case. OK? So you'll go back and you will  
3 compare. But they very intentionally wanted to highlight and  
4 show to you this portion. And again, you know, here Jason  
5 Galanis is saying, you know, best friend of 23 years.

6 I just want to step back to Francisco Martin.  
7 Francisco Martin testified again that Mr. Cooney and Jason  
8 Galanis were childhood friends -- which is again ridiculous.

9 But Francisco Martin had known Jason Galanis for about  
10 17 years, and his exwife and Jason Galanis' wife Monet Berger  
11 were very close friends. He went to his wedding, and they were  
12 part of each other's social circle for many, many years; and he  
13 began working for Jason Galanis in 2014. And during the 17  
14 years that he was friends with Jason Galanis, the first time he  
15 meets Mr. Cooney twice is, you know, two years ago? I mean it  
16 just doesn't make sense. You know, if Mr. Cooney and Jason  
17 Galanis are these childhood friends, you know, it's just Jason  
18 Galanis, that's his -- and we're going to see a little bit here  
19 about how Michelle Morton, they're just con artists; they just  
20 lie for sport.

21 So here we have this snippet. Then let's go to what  
22 is now marked as Defendant's Exhibit 3800. She says: "Do any  
23 of your contacts have a relationship with Roc Sports Nation?  
24 It's Jay Z's sports agency. Would love to hook up with him  
25 somehow. Bevan is calling you about Jay Z -- this is Jason

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Summation - Ms. Notari

1 Galanis -- 415 area code.

2 Are you um-hum? That's better than a pony. Josh and  
3 Bevan are close, and knows Jay Z, or more. Josh Takeman has  
4 worked for Puffy for 18 years. What does Josh do if I may ask?

5 Acts cool mostly. Who is Bevan again?

6 Bevan Cooney. Sorry?

7 We're missing a part. Here, I can read it.

8 Who is Bevan again?

9 Best friend of 23 years, an equitu holder in all the  
10 businesses.

11 Again this is what he does. You know, he just puts  
12 things out there because he is trying to -- constantly trying  
13 to, you know, make himself feel more important, lie about, you  
14 know, whatever he can lie about, and make himself again feel  
15 important. I thought Sugey was your best friend. He's a  
16 professional connector. Cooney is from Missoula, grew up with  
17 Kevin Washington. Washingtons are home grown dollar zero  
18 multi-billionaires, 9 billion. Beverly Hillbillies. Cooney?  
19 Missoula? Huh? Montana style? Bevan Cooney.

20 You know, one of my colleagues read that and said, you  
21 no, do best friends talk about each other like that? I mean  
22 it's very clear what --

23 MS. MERMELSTEIN: Objection.

24 THE COURT: Let's just leave out what your colleagues  
25 said.

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Summation - Ms. Notari

1 MS. NOTARI: Sorry.

2 Can we go to the next one.

3 So that was March 5, 2015. Right?

4 Can you find the e-mail? Oh, I'm sorry.

5 9 billion. I understand. I don't know why you waste  
6 your time with me given the muckety mucks you know. Ha.

7 Because it's not my 9 billion and you're more fun. Good  
8 answer. Good answer.

9 Again, you should reread this and think about this in  
10 context of all the evidence and what Jason Galanis was about  
11 and what Mr. Cooney represented to him, that, you know,  
12 Mr. Cooney was just -- he was just a person who used, and  
13 conned, and deceived to get to other people. And in this case,  
14 we know, that from his audio recording, you know, you can put  
15 it all together. I mean it's just -- this is not -- this is  
16 not very complicated, you know, as long as you're looking  
17 through the clear glass and not the muddy glass.

18 So this is compelling, because this is March 6, 2015  
19 this is the next day. And so in that first message with Jason  
20 Galanis she is trying to get some person who has an affiliation  
21 with Roc Nation (sports agency) Jay-Z's nation And now she  
22 takes it to the level she wants to take it. Good morning, I  
23 have been given the opportunity to develop a proposal to form a  
24 strategic alliance with a sports agency division of Roc Nation  
25 to provide investment advisory services to their talent. I am



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Summation - Ms. Notari

1 working on this with one of my partners Bevan Cooney, who is  
2 currently working with its founder on other projects. If I am  
3 successful, we will accelerate development of our advisory  
4 division, which I believe will have a material impact on Dave  
5 McMillan, Patty Denvir and Don. I am sharing this information  
6 with you to manage expectations regarding our activities during  
7 the initial phase of this transaction. If you wish to share  
8 this --

9 So, you know, this is the day before she says Bevan  
10 who, and now suddenly they're business partners.

11 Again, there is -- there is just -- you know, this is  
12 not -- this is not charged in the conspiracy, and Mr. Cooney  
13 doesn't even know -- doesn't even -- never even met her before.

14 Now, Mr. Cooney's e-mail. The government has made a  
15 big deal about Mr. Cooney's e-mail, and they love putting those  
16 Bevan Cooney e-mails in front of you. This is -- I think this  
17 is all of Mr. Cooney's e-mail, his statements and all the -- I  
18 think there is close to two dozen e-mails when he is saying  
19 absolutely nothing.

20 You know, basically the format of these e-mails is  
21 that Jason Galanis -- you see Jason Galanis launching an idea,  
22 you see Jason Galanis supplying his investors with supportive  
23 research or examples of other brilliant business deals. You  
24 see marketing literature. You see lawyers from top law firms  
25 involved, Dr. Rory Knight. You see lawyers, bankers. And the

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Summation - Ms. Notari

1 importance of this is that, again, you keep in mind context,  
2 and your own life experiences, how -- I don't want to say men,  
3 because I think women do it too -- but how people act  
4 informally. And, you know, I remember that I worked for a  
5 public defenders office, and every morning the guys in the  
6 office would --

7 MS. MERMELSTEIN: Objection.

8 THE COURT: Yeah.

9 MS. NOTARI: Well, it's just argument.

10 THE COURT: Let's move on.

11 MS. NOTARI: So, anyway, this is just your common  
12 experience, how we've already seen the crappy loans are us.  
13 This is how people act. And there should be -- you can't --  
14 these e-mail --

15 OK, this is Mr. Cooney's comments which are the  
16 government is trying to say that they are indicative of some  
17 type of guilt. Another fantastic puzzle piece. West Coast  
18 offense charging down the field. The Greek. He includes a  
19 picture of a jack. This is pure genius. Here Greek. Greek  
20 just running at a frenetic pace. Love it. Just a big time  
21 hump day closing. Road map coming together. This is just so  
22 solid. A satellite toast is in order. We gave Milky his shot.  
23 He's Dungi. Very promising Greco.

24 I mean just go through -- go through the e-mail, and  
25 put your clean eyeglasses on, not the muddy ones, and there is

I6R7GAL3

Summation - Ms. Notari

1 just nothing here. You know, this is just casual banter, and  
2 they're trying to say that they had this intent to do this  
3 financial conglomeration, and it's just not acceptable.

4 Can you go to the next one.

5 I did want to, you know, point out that with the  
6 e-mail, you know, you're not going to see -- you should -- you  
7 should look, because you're not going to find it. You're not  
8 going to find an e-mail where Mr. Cooney is saying anything  
9 remotely as if he is being asked to give advice or direction.  
10 He was -- that was not his part in this. He was -- he was the  
11 passive investor; he was the guy who brought levity; he was guy  
12 cheering them on because they were so -- because these were  
13 elite, elite, elite investors, and nobody was ever going to  
14 listen to or want to hear from him.

15 And, you know, it reminds me that, you know, sometimes  
16 when you're in a situation where you have nothing intelligent  
17 to say because it's so complicated and it's so beyond you, you  
18 kind of give something light and, you know, not very serious,  
19 because that is what he brought to the table, that was who he  
20 is. And it's not to say it's a bad thing; it's not to say he  
21 is not a bright person. Of course he is. It's just he was a  
22 passive investor; he was not anything more. And there is no  
23 evidence of that. He was not a part of the investment  
24 committee. He was not a marketing, he was not part of the  
25 executive, he was not a director, he was none of this; he was

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Summation - Ms. Notari

1 just a minority shareholder.

2 Now -- sorry.

3 The government, this is another e-mail that they  
4 showed you during their summation, and they used this word  
5 discretionary. And Mr. Schwartz did a fabulous job of going  
6 through and explaining the word discretionary.

7 I just want to point out that Mr. Cooney -- that they  
8 put so much -- and the initial part of this chain, you know,  
9 Jason Galanis says something about we get to -- we get 15  
10 million for us and five to them, and my client's comment,  
11 Mr. Cooney, says what do we get to do with the 15 million. So  
12 he just -- again, he just -- you know, they're trying to infer  
13 guilt here from innocuous statements that are absolutely  
14 consistent with innocence.

15 Can you go to 2253? OK.

16 This is another e-mail that they showed you yesterday,  
17 and it says: Super stressful having no liquid honey. Which  
18 again taken out of context this statement just sounds, you  
19 know, so, you know, so un-savory. But when you think about the  
20 context of what was going on in his life, you know, he was --  
21 he was going through a period where he was not -- there was no  
22 money coming in, and you could see down below, Government  
23 Exhibit 3251 -- again this is an example -- these are all  
24 Government's exhibits that I'm showing you, because they tell  
25 the story of in context of what has happening in his life.

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Summation - Ms. Notari

1           So, Government Exhibit 3251, we know this was just  
2 about the time when he is applying for the loan from CNB, which  
3 again is something that he had done in the past, and he had  
4 always made good on his loans, and he had good credit. And we  
5 see that here the government's -- this e-mail down here is  
6 March 25, that they're trying to get the bonds into the DTC  
7 system. And here if you go up to April 1, 2015, in  
8 government's 3245, this is exactly consistent with the fact  
9 that these were his bonds and he was trying to sell them. Call  
10 Richard Isaacs my broker if you have any questions. We need to  
11 make sure I sign anything we need before I leave Saturday.  
12 This is a huge trade. I have an institutional buyer lined up  
13 to take me out of this bond position. Super top priority.  
14 Solves all my problems.

15           So in combination, you know, we can make sense of what  
16 is going on in these e-mails, and he is trying to sell his  
17 bonds -- and I want to get to that in a minute -- but this  
18 is -- this is -- this is what is happening with super stressful  
19 having no liquid honey.

20           And if we look at the loan chart, you know,  
21 subsequently there is loans back and forth, but during this  
22 time period Jason Galanis makes him several loans, and  
23 eventually he pays back, you know, \$150,000. So there is  
24 nothing sinister about this. This is everyday business  
25 America.

I6R7GAL3

Summation - Ms. Notari

1           Now, I just want to focus on some e-mail that  
2           they're -- they focused on. And, you know, they're trying  
3           to --

4           Can you take the yes, Eric classified.

5           So this is an e-mail they haven't mentioned yet, but I  
6           think it's probably going to come later on today, because --  
7           and we're not hiding from anything. You know, we have nothing  
8           to hide here. This is a conversation between Mr. Cooney and  
9           his accountants, and he says to date you have no income, so the  
10          attached doesn't look so great. This is he is trying to get a  
11          loan, if you look at all the other e-mail. However, I can  
12          reclassify one or more of the transfers of money that came in  
13          from Thorsdale and call it investment income, or something else  
14          if you like to, generate some revenue/profit.

15          And he says, yes, Eric, reclassify \$1.9 million of the  
16          Thorsdale related transfers.

17          You know, this is again like your accountant calls you  
18          and says, do you want to do this? And you say, sure, let's do  
19          that. I mean it's -- it's -- there is -- there is just nothing  
20          here.

21          You know, if you look at the money chart, there was no  
22          \$1.9 million. It's not -- it's not even part of their theory  
23          of the case. So it's just here to make it seem like it's  
24          something more. And I just --

25          You know, conversations between your -- you put on

I6R7GAL3

Summation - Ms. Notari

1 evidence that your accountant, Mr. Cooney's, at Fulton  
2 Management are credible, reputable people, and then you try to  
3 disparage your e-mails with him. I mean pick a path. Just  
4 don't throw mud all over the place, which is what they're  
5 doing.

6 Now, the government has spoken to you about the  
7 Calvert documents, and they're making a big deal about the fact  
8 that Mr. Cooney -- that Calvert was -- there was testimony that  
9 Calvert was created in October of 2015, and this was one of  
10 Jason Galanis' fake companies, and that somehow you should  
11 attach significance to the fact that some of the documents that  
12 Mr. Cooney obtained and gave to his accountants were Calvert  
13 documents.

14 But again, you know, people do not create false  
15 documents -- they create them with the intent to pass them to  
16 others to deceive them. This is the testimony of Hugh  
17 Dunkerley:

18 "Q. I want to talk to you now a little bit about Calvert  
19 Capital.

20 "A. Yes.

21 "Q. You testified last week that one of the crimes that you  
22 have plead guilty to was obstruction of justice, true?

23 "A. True.

24 "Q. And that included the falsification of documents, right?

25 "A. True.

I6R7GAL3

Summation - Ms. Notari

1 "Q. And you were directly involved in creating or signing  
2 those false documents, correct?

3 "A. Yes.

4 "Q. In fact, we don't need to look at it, but one of those  
5 fake documents that was created was an agreement between  
6 Thorsdale and Calvert, right?"

7 So we see there is a relationship between Thorsdale  
8 and Calvert.

9 "Q. And Calvert's sole purpose was to deceive people, correct?

10 "And again the only purpose that you ever discussed  
11 Calvert and its illicit purpose with were Gary Hirst and Jason  
12 Galanis, true?

13 "A. True.

14 So there you have it. There you have it. Hugh  
15 Dunkerley their cooperator, who knows nothing about Bevan  
16 Cooney, testifies that the only people who knew these were  
17 illicit documents were them. And now the government is trying  
18 to say that Mr. Cooney somehow knew that these Calvert  
19 documents were false. And the fact that, you know, he had  
20 them, you know --

21 Can you go to the next exhibit?

22 This is one of the documents that they're focused on,  
23 and this is sent to Mr. Cooney -- it's very clear. And again  
24 common sense, you know, it's the beginning of the year and  
25 you're trying to get your taxes together. Vanessa, I found the



I6R7GAL3

Summation - Ms. Notari

1 file for my taxes for last year. Thorsdale loaned me this  
2 property for a short period of time. The money went through my  
3 CNB account into Camden Escrow in Beverly Hills. It was a  
4 failed real estate transaction.

5 So this document establishes that the Camden -- that  
6 the transaction for 1920 Bel Air, the failed real estate  
7 transaction, it actually confirms -- and if you read it it says  
8 that, you know, the loan was funded, made to your family trust  
9 on November 12, 2014. This letter confirms that the loan of  
10 \$3.89 million was made for the purpose of a joint venture with  
11 a residential real estate investment. You funded escrow on  
12 November 13 with the proceeds of the loan made to you. The  
13 transactions require the Bel Air property did not work out as  
14 expected for reasons beyond your or our control. You were  
15 instructed by Thorsdale as the agent for the lender Calvert to  
16 cancel escrow and wire the proceeds held in escrow to the  
17 attorney/client trust account, of counsel to Thorsdale, which  
18 you did prior to year end -- which is all in the government's  
19 chart.

20 (Continued on the next page)

21  
22  
23  
24  
25

I6RJGAL4

Summation - Ms. Notari

1           Accordingly, when you completed the wire, you loan was  
2 paid off and the proposed venture terminated. Let us know if  
3 you require anything else, signed Jason Galanis. So Mr. Cooney  
4 handed this document to his accountant, and now it is the  
5 evidence in this case.

6           So I just want you, when they talk about the Calvert  
7 documents, that you should just keep in mind that these were  
8 fake documents and they were intended to be fake and they were  
9 passed to people, including the government, as part of the SEC  
10 investigation. They passed these false documents and that  
11 there was testimony in this case that the only persons who knew  
12 they were fake were Hugh Dunkerley, Jason Galanis and Gary  
13 Hirst and possibly Francisco Martin.

14           If we can go to the next one. So this is the money  
15 chart that we put together and we put in evidence, and again  
16 you recall Saranya testified and there was a slight error in  
17 one of the numbers, the DX 3291, that is inaccurate, but GT  
18 3209 is a compilation of all those documents, so you can see  
19 the reference these documents by just going to 3209 and  
20 everything else is accurate.

21           I just want to say the government, when we  
22 established, we brought this chart in, the only thing they  
23 questioned Ms. Saranya was on the fact there was an error.  
24 They did not dispute a single financial transaction here. This  
25 is all documents, the financial records, and we didn't put this

I6RJGAL4

Summation - Ms. Notari

1 on the chart because for issues that I can't, you know, that  
2 basically it was at the time we prepared the chart, all this  
3 wasn't just ready to go.

4 MS. MERMELSTEIN: Objection.

5 MS. NOTARI: You can reference all these emails, and  
6 what you will find is that every single email perfectly  
7 corresponds with incoming and outgoing wires.

8 These are all communications that Mr. Cooney had with  
9 Fulton, his business managers, Matthew Fillman, Alexis Gluckman  
10 and you can see this is like in DX 3141, it is a convertible  
11 loan. Alexis, please wire 400,000 to this account this  
12 morning. Sen me wiring information when available. Alexis, it  
13 is the detailed records of every transaction and Anslow &  
14 Jaclin was a Jason holmby, at his request. Jason Galanis here  
15 asking Bevan Cooney please wire \$35,000 to Oxford Metrica, to  
16 Dr. Rory Knight. This is a law firm.

17 Again it goes through all the different -- and what is  
18 important is that we worked out, we sorted out we should let  
19 you should do your own math.

20 MS. MERMELSTEIN: Objection, your Honor.

21 THE COURT: I will sustain that portion. How much  
22 time do you have left?

23 MS. NOTARI: About 10 minutes.

24 THE COURT: Okay.

25 MS. NOTARI: So in this chart, if you add up, these

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Summation - Ms. Notari

1 are all the wire transactions between Mr. Cooney and Jason  
2 Galanis or Jason Galanis business deals, and what it shows is  
3 that the loss is about \$43,000 -- I mean Mr. Cooney was out  
4 \$43,000, so at the end of the day he made no money.

5 The government changed their position in the opening  
6 statement. This was all about the money that Mr. Cooney was  
7 going to make, and now they've suddenly changed their position  
8 that this is about, you know, the money he was going to make  
9 for the financial conglomeration.

10 If we go to the government's chart, so this is the  
11 government's chart, and so this chart shows that the money went  
12 to Mr. Cooney and then he bought the \$5 million bonds and then  
13 it went to Bonwick Capital.

14 Go to the next chart. Now, this chart, if you do the  
15 math, this chart says that Mr. -- it totally, it completely  
16 does not take into consideration the fact that Mr. Cooney did  
17 not keep \$5 million. \$5 million went to U.S. Bank for the  
18 bonds. That was a loan. So that is not correct.

19 Then if you do the math, the government does not  
20 include in their chart, if you go back to our chart, it does  
21 not include any of the money that Mr. Cooney sent Jason  
22 Galanis, after all this money in 2013, it doesn't reflect that,  
23 and it doesn't reflect the money that Mr. Cooney wired to  
24 Thorsdale on July 6th, 2015, he wired a hundred thousand  
25 dollars. On July 9th, 2015, he wired \$50,000. So they

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Summation - Ms. Notari

1 selectively have chosen to mislead you with what they want to  
2 mislead you and leave with this number of 5 million, all this  
3 money that he received when it is just not true.

4 Now, I just want to explain, and I didn't get to this,  
5 and I think it is very important why Mr. Cooney purchased the  
6 bonds. Mr. Cooney invested in Burnham, and Burnham was the  
7 placement agent for the bonds, and Jason Galanis was, what he  
8 was telling people, and this is like the common story he was  
9 telling everyone, these bonds were in great demand, there were  
10 institutional buyers.

11 At one point that was -- he told, and I don't really  
12 want to credit Francisco Martin, but Francisco Martin bought  
13 the bonds, but he bought them in a fake name. Mr. Cooney,  
14 these were his bonds. He bought them in his own name with his  
15 bankers and he bought them with a loan. He had no idea that  
16 the money that Jason Galanis gave him for this loan was money  
17 that was from the first bond proceeds.

18 You have to understand Mr. Cooney, there is a lot  
19 going on here. He is a businessperson, and Jason Galanis is  
20 telling him that this is good for Burnham, this is good for  
21 movement of the bonds. Mr. Archer had bought the first half of  
22 the tranche of bonds, and we know from the audio recording that  
23 Mr. Cooney thought Mr. Archer -- you can read that and listen  
24 to that transcript and you'll see as far as his state of mind  
25 and what, they were friends and he thought he was a brilliant

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Summation - Ms. Notari

1     guy and he trusted him.

2             They're trying to just distract you and throw mud on  
3     the walls. Mr. Cooney knew that this was a conservative  
4     investment. It was a mutual bond, 6 percent interest, and he  
5     was trying -- in February of 2009, there is attached to the  
6     financial statement is a statement of what the bonds were  
7     worth, and they were worth \$5.5 million.

8             And so this is not, you know, nobody knew what Jason  
9     Galanis knew. You know, everyone thought this is part, a small  
10    part of this financial conglomeration and that this was,  
11    Burnham was moving in the direction of, you know, mutual bonds  
12    and the Native American, all the things that Jason Galanis,  
13    that puts in his emails, that Bonwick Capital was part of this.  
14    There was no reason to believe, you know, what we now know.

15            There was no way he could have known, you know, that  
16    he was stealing those proceeds. His intent, and we can see in  
17    the email I just showed you, he was going to sell the bonds,  
18    and he tried to do that. It was just a business deal and he  
19    thought that, you know, he thought that he was helping Burnham  
20    and Burnham was the placement agent, and you should consider  
21    that Tim Anderson, the lawyer for Dillworth Paxson, again he  
22    testified there was nothing wrong with the bonds, there was  
23    nothing wrong with an individual like Mr. Cooney to purchase  
24    the bonds, that Mr. Cooney told his -- he provided information  
25    as soon as the wire came in to Fulton Management, but that he

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Summation - Ms. Notari

1 purchased the bonds with a loan.

2 He provided the loan agreement to them. This was,  
3 yes, he absolutely believed in his investment in Burnham and he  
4 believed, like all of them, that this was going to be the next  
5 Guggenheim, and the government's case just doesn't make sense.

6 You know, when you consider -- first I want to talk a  
7 minute about the court's instructions. Mr. Schwartz has  
8 already gone through and Mr. Touger has gone through the law,  
9 and so I don't want to repeat what they say, but the court is  
10 going to instruct you that there was clearly a fraud here. We  
11 are not trying to -- we have never, never, never said that  
12 there were not victims, and there is no dispute the victims in  
13 this case were the WLCC and also the people, the investors.

14 The allegation is has two pieces to it; the defendants  
15 engaged in a scheme to misappropriate the proceeds of several  
16 bond issuance by WLCC and also they caused investor funds to be  
17 used to purchase the bonds, in violation of a fiduciary duties  
18 with all those undisclosed conflicts of interest.

19 So what we want to, what I really want to leave you  
20 with is that Mr. Cooney did not communicate in any way, shape  
21 or form with any of the victims in this case, as we already  
22 said, that he had no contact with the WLCC, that the only  
23 witness you heard from was Raycen Raines from WLCC and they  
24 never met Mr. Cooney. All of the emails that were forwarded to  
25 Mr. Cooney, you can look at those emails. There is just no

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Summation - Ms. Notari

1 proof or no evidence that he had any contact with the WLCC, he  
2 had any contact with the victims.

3 There is no evidence of any misrepresentation. There  
4 is no evidence of that. I am not sure if they're trying to say  
5 they misrepresentations to the bank is somehow  
6 misrepresentation. Mr. Cooney, there is no lies here. There  
7 is no misrepresentations.

8 You know, the pension funds, you heard from  
9 Mr. Griffin, he never met Mr. Cooney. You heard from Mr. Smith  
10 from Nebraska. He never spoke to Mr. Cooney. You heard from  
11 Mr. Moore from the Goodyear Company. He never interacted with  
12 Mr. Cooney. You heard from Mr. Turney, who worked at Atlantic,  
13 the investment adviser. He never had any interaction with Mr.  
14 Cooney. It is simply Mr. Cooney had no communications with any  
15 of these people.

16 In order for you to establish a conspiracy, you know,  
17 Jason Galanis lied to everyone. There is no conspiracy between  
18 Mr. Cooney and Jason Galanis. Michelle Morton spoke to Mr.  
19 Cooney the first time on March 5th of 2015. There is no  
20 evidence of any communication between Mr. Cooney and Michelle  
21 Morton which establishes a conspiracy.

22 Francisco Martin, you know, only spoke to Dunkerley,  
23 Hirst and Galanis about the bonds. No conspiracy.

24 The only thing we have is that ridiculous phone call.  
25 Mr. Cooney did not speak to Gary Hirst. There is like a



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Summation - Ms. Notari

1 limited communication between him but, of course, Gary Hirst  
2 was very connected to Jason Galanis, so an email to Gary Hirst  
3 doesn't mean anything. There is one email in evidence between  
4 Mr. Cooney and Gary Hirst.

5 The court is going to instruct you on the law, but  
6 there are no misrepresentations, and as Mr. Cooney, Mr.  
7 Schwartz said yesterday that the placement agreement very  
8 specifically talks about disclosure, and Mr. Cooney had no  
9 reason to know that what was being told to the clients that  
10 Michelle Morton was dealing with, and she ultimately pled  
11 guilty to her failure to disclose what she was supposed to  
12 disclose. Again there is just no evidence of that.

13 I am almost done.

14 (Off-the-record discussion)

15 MS. NOTARI: Members of the jury, this moment is very  
16 hard. It is my time to sit down. Throughout the five weeks I  
17 have been with you, have been Mr. Cooney's voice in this  
18 courtroom. I told you early in this case I believe he is  
19 innocent.

20 MS. MERMELSTEIN: Objection, your Honor.

21 THE COURT: Let's not give us your personal views.

22 MS. NOTARI: I believe the evidence shows that  
23 innocence is not a standard in this courtroom. The standard is  
24 proof beyond a reasonable doubt, and every piece of evidence  
25 that we've analyzed today here is perhaps the government will

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Summation - Ms. Notari

1 say it is consistent with guilt, but it is absolutely  
2 consistent with innocence. That should raise a hesitation in  
3 your mind for all of the reasons I've outlined for you.

4 At the end of this case, your voice in this courtroom  
5 sends a message as to the type of cases that, the type of proof  
6 you as citizens taxpaying citizens expect our government to  
7 bring, and this case is just not acceptable.

8 I ask you to return a verdict of not guilty. This is  
9 not a complicated case. They have made it very complicated and  
10 it distracted you, but it is not complicated case. Thank you.

11 THE COURT: Thank you. So, ladies and gentlemen, we  
12 are going to take a break now. What I need to determine, and I  
13 will speak to the lawyers about scheduling, whether you should  
14 take your lunch break now or just a short break, have the  
15 government rebuttal, and then I will charge you after the lunch  
16 break. Why don't you take a break and Ms. Cavale will come in  
17 momentarily and let you know our schedule today. Thank you.

18 (Jury excused)

19 THE COURT: How long is your rebuttal? Do you have a  
20 sense of it?

21 MR. QUIGLEY: It is not eight hours of defense  
22 summations, but 45 to 50 minutes, maybe an hour. I am happy to  
23 go now. I think the jury needs a break.

24 THE COURT: I had planned for you to go before lunch,  
25 but I think in light of the time, it is almost 1:00 o'clock, we

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Summation - Ms. Notari

1 should take our lunch break now.

2 (Off-the-record discussion)

3 THE COURT: I am happy to ask the jury.

4 MS. MERMELSTEIN: Some of the jurors, in response  
5 to -- I will ask the lawyers clearly want to take the lunch  
6 break now. We are happy to do whatever your Honor wants.

7 THE COURT: I am going to say we ask the jury.

8 MR. QUIGLEY: We it might be an hour. It won't be 20  
9 minutes.

10 (Pause)

11 THE CLERK: Lunch!

12 THE COURT: We're going to take lunch now. So why  
13 don't we come back, can we come back in a quarter to. We'll  
14 start promptly at 1:45.

15 (Luncheon recess)

16 (Continued on next page)

I6RJGAL4

Summation - Ms. Notari

1 AFTERNOON SESSION

2 1:50 pm

3 (Trial resumes)

4 (In open court; jury not present)

5 THE COURT: You may be seated. Thank you. We are  
6 still waiting for one or two jurors, so you may set up.

7 (Pause)

8 THE COURT: We are going to bring in the jury. I will  
9 note for you that some jurors expressed -- I don't want to say  
10 concern, but query about the fact that two of the jurors are  
11 out all of next week, and as I have noted previously, they  
12 indicated they can't sit on Friday and asked, you know, would  
13 11 of us sit?

14 I want you to all think about who we should have start  
15 deliberating, if we should include Juror No. 4 or 5 who is  
16 going on vacation next week. I know it is 13, right?

17 THE CLERK: 13 leaves on Friday. She is an alternate.  
18 Then number -- Mr. Sander, No. 5, is leaving on July 6.

19 THE COURT: No. 5? 5 is leaving July 6, but there is  
20 one who is out next week. I will find my notes for you in  
21 terms of who it is, but I want you to start thinking about if  
22 we should start deliberating with the original twelve,  
23 recognizing one of them is going to be out as of Friday.

24 MR. SCHWARTZ: Putting the jury's schedule aside, what  
25 would your Honor be intending to do if everyone were able to

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Summation - Ms. Notari

1 sit every day?

2 THE COURT: I am inclined to sit as much as we  
3 possibly can. If we can sit Friday, I would sit Friday. I am  
4 happy to sit all day Monday, Tuesday. Obviously, we'll be out  
5 on the 4th, and then back on the 5th and 6th. That is my  
6 intention.

7 I usually leave it to the jurors to set their schedule  
8 in terms of when they come in and leave every day. I would be  
9 amenable also to leaving early on Tuesday because of the July  
10 4th holiday, but I frankly would be inclined to leave it to the  
11 jurors. Think about that and we'll talk about it at the next  
12 break.

13 MR. QUIGLEY: We need two seconds for the power.

14 MR. SCHWARTZ: Are you going to remind us who the  
15 jurors are and what the schedules were?

16 THE COURT: Let me find that for you. Tell me when  
17 you're ready, Mr. Quigley.

18 MR. QUIGLEY: Will do, your Honor.

19 (Pause)

20 MS. MERMELSTEIN: Your Honor, is it worth reconfirming  
21 with them how flexible Friday is? My sense is that we haven't  
22 been sitting Fridays, and they were asked about Friday and they  
23 said no. Maybe that is not as hard --

24 THE COURT: If someone like Juror No. 13 that we are  
25 letting go, let's say we decide to do that, if she was the

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Summation - Ms. Notari

1 issue on Friday, maybe we we could sit on Friday.

2 MS. MERMELSTEIN: Exactly.

3 THE COURT: I am trying to find the note where we had  
4 everyone's schedule.

5 MR. QUIGLEY: 7 and 13 had an issue next week and the  
6 court was the following week.

7 MR. SCHWARTZ: If you remember, we had had that  
8 conversation on the record.

9 THE COURT: We can ask them again.

10 MR. SCHWARTZ: Or we can ask again.

11 THE COURT: How long are you going to be until you're  
12 ready?

13 MR. QUIGLEY: We are just pulling it up now.

14 THE COURT: We can have Ms. Cavale go back and say in  
15 light of what people just expressed, I want to go through with  
16 each of you who has a scheduling issue when, including Friday.

17 MR. SCHWARTZ: That makes sense.

18 THE COURT: Do you want to do that?

19 (Off-the-record discussion)

20 THE COURT: Mr. Miller, who is No. 7, is out all of  
21 next week. Mr. Miller, right?

22 THE CLERK: And No. 13 leaves on Friday and is out all  
23 next week, too. Mr. Sanders, who I think is No. 5, is out on  
24 July 6th and onwards. A bunch of them are not available to sit  
25 this Friday.

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Summation - Ms. Notari

1 THE COURT: Did everyone hear that?

2 MR. SCHWARTZ: I did not.

3 THE COURT: No. 7 is out all of next week. No. 13 is  
4 out Friday and all of next week. Mr. Sanders, who is 5, is out  
5 on July 6th, and then a number of people are not available on  
6 Friday. From my perspective, it sounds like we can't sit  
7 Friday.

8 I think the question is do we substitute an alternate  
9 other than 13 for No. 7? I don't think we should excuse  
10 Mr. Sanders because he is free until July 6th. I think the  
11 issue is given that we may only have one full day of  
12 deliberations, a little bit more, should we let 7 go and 11  
13 go -- excuse me -- 7, 13? I misspoke. Why don't we hear the  
14 government rebuttal and think about it and talk at the break  
15 before the charge. Sanders is No. 4. You know who we mean, it  
16 is the man sitting in the front.

17 THE CLERK: Mr. Miller is 7.

18 MR. SCHWARTZ: Who is seated in Seat No. 7?

19 THE CLERK: Mr. Miller.

20 THE COURT: And 13, who is in the back on the left is  
21 the alternate not available Friday or next week.

22 THE CLERK: Ms. Sanchez.

23 MR. SCHWARTZ: The next alternate would be the  
24 gentleman sitting next.

25 THE COURT: In the glasses. Let's bring them in.

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Rebuttal - Mr. Quigley

1 Thank you.

2 (Jury present)

3 THE COURT: Everyone can be seated. Thank you. Since  
4 the government has the burden of proof in a criminal case, they  
5 are entitled to a rebuttal summation. Mr. Quigley.

6 MR. QUIGLEY: Thank your Honor. Good afternoon,  
7 ladies and gentlemen.

8 A \$60 million fraud, a fraud that everybody agrees  
9 happened, a fraud where crimes were indisputably committed, a  
10 fraud in which each of these defendants moved millions and in  
11 some cases tens of millions of dollars, yet their argument is  
12 they had no idea, they were in a den of thieves and they had no  
13 idea. That is what they want you to buy.

14 Let's make one thing clear before we get into this.

15 The government has the burden of proof in this case, a  
16 burden to prove the defendants' guilt beyond a reasonable  
17 doubt. It is the same burden that has been applied in every  
18 criminal trial in this country in the last 200 years. It is a  
19 burden we embrace and it is a burden we met. When the  
20 defendants make arguments like they just did, it is entirely  
21 appropriate for you, as jurors, to scrutinize those arguments  
22 and see how they match up to the evidence, to see if they hold  
23 any water.

24 So I am going to spend the next little while  
25 responding to some of those arguments. I don't have eight and



I6RJGAL4

Rebuttal - Mr. Quigley

1 a half hours like they did, so I am not going to respond to  
2 every single one. I will try to hit the major ones.

3 This is a case about knowledge. Did the defendants  
4 know what they were doing or were they unwitting dupes? The  
5 evidence at this trial showed that they knew well what they  
6 were doing. Jason Galanis kept Devon Archer and Bevan Cooney  
7 in the loop every step of the way about his need for money,  
8 about his need for discretionary liquidity, about minute  
9 details of the bond transactions like the CUSIP number for the  
10 bonds, like when certain people signed bond documents, like  
11 details about the closing of the Hughes and Atlantic.

12 John Galanis was the person who approached the  
13 Wakpamni, who drafted the early deal documents, who made  
14 representation after representation that you know was false.  
15 Who put \$2.35 million into his own pocket. Who told his  
16 minion, Mark McMillan, where the money would go by using his  
17 lawyer's email address and who, as you heard yesterday, pled  
18 guilty to participating in a previous securities fraud with  
19 Jason Galanis.

20 If the defendants were innocent dupes, why the lies?  
21 It is not just one lie, ladies and gentlemen. It is a pattern,  
22 lies to the Wakpamni, lies to the pension funds, lies to the  
23 banks, lies to the BIT Board. If the defendants were innocent  
24 dupes, why the coverup? Why the fake documents? Why helping  
25 to pay interest on the bonds? The defendants are hoping you

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Rebuttal - Mr. Quigley

1 lose the forest the trees. Their actions over and over again  
2 over many months demonstrate what your common sense tells you  
3 they knew what was going on, they were in on it, they were  
4 going to make it work, work for John Galanis, work for Hugh  
5 Dunkerley, work for Michelle Morton and work for themselves.

6 Mr. Schwartz yesterday and Ms. Notari this morning  
7 made a big deal how Mr. Archer and Mr. Cooney, they were never  
8 in contact with the SEC or never spoke to any of the pension  
9 funds. Who know who never talked with WLCC, never talked to  
10 any of the pension fund victims? Jason Galanis. Because that  
11 is how big conspiracies, big schemes like this work. Everyone  
12 has a role to play, and the defendants played their role and  
13 they played it well.

14 So let's walk through some of the arguments here. You  
15 heard a lot about legitimate business transactions and how all  
16 these transactions were covered by lawyers and accountants, but  
17 let's look at some of the actual transactions that showed the  
18 defendants were part of this fraud.

19 Let's look at how Archer and Cooney bought the second  
20 series of Wakpamni bonds. Before we begin, make no mistake,  
21 Archer and Cooney knew that the evidence, the money used to buy  
22 these bonds came from the first issuance. It was recycled in a  
23 matter of weeks.

24 For one, as I mentioned before, and as Ms. Mermelstein  
25 showed you on Monday, they were kept in the loop every step of

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Rebuttal - Mr. Quigley

1 the way, and again Mr. Schwartz and Ms. Notari made a big  
2 argument Mr. Archer didn't meet Michelle Morton until March  
3 2015, Mr. Cooney didn't meet Michelle Morton around that time.  
4 There is email after email where they're getting updates what  
5 Michelle is doing from Jason Galanis. Michelle Morton might  
6 not have known them, but they certainly knew her and they knew  
7 her from way back in the spring of 2014, early summer of 2014  
8 before the Hughes transaction even happened.

9 Do you remember that email that Jason Galanis sends to  
10 Michelle Morton attaching the COR Capital summary and he sends  
11 to Bevan Cooney, who no doubt shamelessly, he responds how do you  
12 do? That is June 2014 before the first bond issuance, well  
13 before the first bond issuance, okay?

14 On this topic, Mr. Schwartz also made a big deal  
15 yesterday about how Jason Galanis lied to Mr. Archer about the  
16 bond issuance. To be sure, Mr. Jason Galanis did lie to him.  
17 That is why he was prosecuted in this case, that is why he was  
18 arrested in the other case you heard about, okay? The emails  
19 Mr. Schwartz showed you yesterday about the barn and the  
20 warehouse, those are accurate status reports on the status of  
21 the Wakpamni construction.

22 As he was cross-examined Mr. Raines about them, is  
23 this not the Wakpamni Community? He didn't do that because  
24 they were accurate status reports. They were kept in the loop  
25 about the status of the transaction.

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Rebuttal - Mr. Quigley

1           Here is what happens with Mr. Cooney's bonds. You  
2       heard about it already. The money comes out of Wealth  
3       Assurance on the first bond issuance, goes into Thorsdale, goes  
4       to Cooney. Cooney buys the second bond issuance and it goes  
5       right back to Wealth Assurance. Later on, in May of 2015, he  
6       uses those bonds to help one of the defendant's companies,  
7       Bonwick Capital, meet its net capital requirements.

8           As you heard from Ms. Walch from FINRA, it was a fancy  
9       way of keeping in business because if you don't keep the net  
10      capital requirements as a broker-dealer, you have to shut down.

11          Here is what happened with the bond Archer bought.  
12      Very similar. Mr. Schwartz showed you an email yesterday sent  
13      by someone named Francisco Martin who you know to Clifford  
14      tried to suggest that the Wolff Law Firm was somehow put in  
15      this transaction to fool Devon Archer, but Devon Archer wasn't  
16      fooled by this. He knew on September 8th long before, two  
17      weeks before the transaction closed that Cliff Wolff was  
18      involved in this transaction. Here is Government Exhibit 2228.

19          Jason Galanis is telling Devon Archer, telling him  
20      about the bonds. Have a word with Cliff, he says means have a  
21      word with Cliff, and they continued, the three of them  
22      continued corresponding with Cliff Wolff over the next two  
23      weeks, 2228, 2300, where actually information about the bonds,  
24      wire instructions for the bonds, there is an FYI, Galanis is  
25      telling Archer and Wolff and Sebastian Momtazi the money is

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Rebuttal - Mr. Quigley

1 coming out of his account in Thorsdale. There is no hiding the  
2 ball from Devon Archer here.

3 Now, as I said, to be perfectly clear, Archer and John  
4 Galanis knew the money was coming from the first issue. How do  
5 they know that? They know Jason Galanis didn't just have 15 or  
6 \$20 million to give him. They knew all about the bond  
7 issuance. They knew it happened. You saw the email this  
8 morning, 2299, where Cooney gets the allocation that Hughes  
9 bought with the first bond issue. There is a ton of emails  
10 kept up to date, 2217, and Galanis and Lonehill signed the bond  
11 documents. Again Galanis is accurately keeping them in the  
12 loop on minute details of the bonds.

13 Ms. Notari and Mr. Schwartz talked a lot about how  
14 Jason Galanis appeared very wealthy. The reality is what he  
15 was good at spending money, but he was not very wealthy by  
16 2014. The defendants knew that, okay? You see other emails to  
17 Archer and Cooney begging for discretionary, sick of begging  
18 for discretionary liquidity. 2023, 2024, 2026, he talks about  
19 the need, the need for dry powder in control soon. That is  
20 2025. 2021, all the governments exhibits where he says laser  
21 focused summer cash hole. A few months later there is Defense  
22 Exhibit 4505 where Archer sends Galanis a short-term loan.

23 So Galanis is clearly in need of spending money. He  
24 doesn't have \$20 million to give away. That matches up with  
25 the testimony of Francisco Martin. You don't have to like

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Rebuttal - Mr. Quigley

1 Francisco Martin, but think about his testimony and how it  
2 matches with the other evidence in this case.

3 He said this is a later investment, but he said there  
4 were no other income that was generated from Jason Galanis'  
5 businesses other than the bond proceeds. That is consistent  
6 with what Galanis is saying in the emails to Archer and Cooney.

7 It is also consistent with what you see in the bank  
8 records, okay? Because you saw in Government Exhibit 4012, the  
9 summary chart, right, for inflows and outflows out of Thorsdale  
10 between August 14 and October 15. Thorsdale got \$43 million in  
11 cash inflows during that time period. 38 million of that came  
12 from Wealth Assurance Private Client, meaning 38 million of  
13 that came from the bonds. The bonds were Jason Galanis' main  
14 source of income, and these defendants knew that.

15 So bottom line, having been kept in the loop every  
16 step of the way, Archer and Cooney knew that Jason Galanis  
17 didn't have \$20 million to give them, much less \$20 million to  
18 give them for free, no questions asked, absent that \$28 million  
19 first Wakpamni issuance in August 2014.

20 Even setting that aside, let's not lose the forest for  
21 the trees. This deal makes no sense. It is filled with red  
22 flags from Archer and Cooney's perspective. I expect Judge  
23 Abrams will instruct you on something called conscious  
24 avoidance, meaning you can't say you didn't know because you  
25 stuck your head in the sand.

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Rebuttal - Mr. Quigley

1           You have heard about a lot of numbers in this case,  
2       okay? Make no mistake, 15 or \$20 million is a huge amount of  
3       money. For Devon Archer, 301 and 60, take a look at the impact  
4       that \$15 million impact on his account, it goes up and buys the  
5       bonds and it goes right down, a tremendous amount of money.

6           If someone came up to you on the street and gave you  
7       \$20.00 and said hey, you go down the street and buy lunch for  
8       me, I am going to stand behind this telephone poll while you do  
9       that, that might strike you as a little strange.

10          If somebody came up to you with a bag of cash, okay,  
11       with \$20,000 in it and said please walk down the block to the  
12       bank for me, I am going to sit in my car over here, and deposit  
13       that cash for me, that would probably be a little weird, too.

14          What happened here is that Jason Galanis, who these  
15       defendants knew certainly had a checkered past, came up and  
16       said here is \$20 million. In other words, 1,000 of the \$20,000  
17       bags of cash I just talked about, and he said go buy these  
18       bonds for me. By the way, you don't have to give me anything.  
19       That does not sound like a legitimate deal, and you know that.

20          Devon Archer knew that, Bevan Cooney knew that, and  
21       that is why, as you will see in a few minutes, you know they  
22       lied about it. They held themselves out to the WLCC as  
23       legitimate purchasers of the bonds, and they knew that Jason  
24       Galanis was engaging, Jason Galanis was engaging in other  
25       transactions during this time period that don't sound like

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Rebuttal - Mr. Quigley

1 legitimate transactions at all.

2 I'll talk about 1920 Bel Air with Mr. Cooney in a few  
3 minutes, but Jason Galanis buys an apartment with, in part with  
4 bond proceeds using Mr. Archer's name. This is from July 9th,  
5 2014, Cliff Wolff, again Cliff Wolff ain't hiding anything from  
6 Devon Archer here. He says Jason Galanis is going to buy this  
7 apartment using the Archer deals and Devon tells Sebastian  
8 Momtazi hey, look out, you might get nailed for this entity at  
9 your address, okay?

10 And then two days later, an email Mr. Schwartz did not  
11 show you yesterday, Government Exhibit 2028, Devon Archer gets  
12 the distribution list from Jason Galanis for the first tranche  
13 of Wakpamni bonds, okay?

14 He tells him that the apartment close is July 31, and  
15 Archer says from your lips to God's ears. How does Galanis  
16 respond? So close. Massively motivated. Cliff, again Cliff  
17 Wolff is running stall for me on the New York City magic. I  
18 want to be here and won't live in a 1750 foot square cage.  
19 Massively motivated.

20 Does this sound like anything like an investment,  
21 annuity or an investment to benefit Native Americans or pension  
22 funds? No. This is clear evidence that Devon Archer was aware  
23 that Jason Galanis intended to use that money, at least some of  
24 that money, to buy an apartment.

25 You know what? That is exactly what happened. These



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Rebuttal - Mr. Quigley

1 we can see. Here is the contract of sale for 260 West  
2 Broadway, \$1 million down payment, Government Exhibit 225. Who  
3 is the seller, by the way? The Wolff Law Firm again, and who  
4 is the seller's attorney? Katsky Korins, LLP. Look at  
5 Government Exhibit 512, look at the Dunkerley testimony. What  
6 is the very first wire out of the bonds when they come in, wire  
7 out of Wealth Assurance Private Client? Katsky Korins, right.  
8 That is that down payment.

9 Jason Galanis told Devon Archer he was going to do it,  
10 and he did it. He took a million dollars in the first bond  
11 issuance and used it to buy, as a down payment on an apartment.

12 Now, Mr. Schwartz also made a big deal yesterday in  
13 saying certain things were argument, not evidence. This is one  
14 of the documents he talked about. This is from a little later,  
15 a year later. Remember this is for the interest payments on  
16 the first bonds. Galanis tells Archer so you get this out  
17 today, I am assured we can turn it today. And the money goes  
18 to Wealth Assurance Private Client, and then the next day, as  
19 you have seen, it goes to pay interest on the first bonds.

20 So Mr. Schwartz says even though Archer happened to  
21 send Galanis \$250,000 the day before the first interest  
22 payments were due on the bonds, that there is not a shred of  
23 evidence that Devon Archer is making an interest payment, knew  
24 he was helping to make an interest payment on the bonds.

25 There is a big difference between speculation and

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Rebuttal - Mr. Quigley

1 drawing inferences from circumstantial evidence. What we ask  
2 you here to do is to do the latter, draw an inference from the  
3 evidence in the case.

4 This is essentially, the whole thing is a crime of  
5 secrecy. Common sense tells you people don't sit around and  
6 say at the table and say hey, let's commit a massive fraud  
7 today. Hugh Dunkerley wasn't told that. Or put in an email,  
8 hey, Archer, I need you to help me make interest payments on  
9 the bond proceeds we misappropriated. People don't say that.  
10 These guys are not stupid.

11 As I said, this is a case primarily about what is in  
12 the defendants' heads, what they knew and what they intended,  
13 and I expect Judge Abrams will instruct you that many material  
14 facts such as what a person was thinking or intending can  
15 rarely be proved by direct evidence.

16 She will also tell you that circumstantial evidence is  
17 as valuable as direct evidence, and the reasons for that are  
18 really really clear. You make all kinds of decisions every day  
19 based on circumstantial evidence. We don't see things  
20 ourselves, but we draw inferences and the logical inferences  
21 from the information around you. I expect the Judge will give  
22 you an example in a few minutes about a raincoat and umbrella,  
23 okay?

24 You have to use circumstantial evidence regarding the  
25 defendants' lies about the bonds and about each other and

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Rebuttal - Mr. Quigley

1 they're involved in transactions that make no sense. See how  
2 it all fits together, and you come to the conclusion the  
3 defendants knew they were part of a massive fraud, which nobody  
4 disputes happened, and they tried to make it succeed.

5 Now, another way a piece of evidence in this case,  
6 another way the defendants knew what was going on was their  
7 lies. Yesterday Mr. Schwartz and today Ms. Notari made a big  
8 deal of trying to dissect each one of these lies, and as I  
9 said, it is not the individual lies in isolation that matter.  
10 Take a look at the pattern, a pattern of lies over a period of  
11 months and, indeed, in some cases with the BIT Board over a  
12 period of years about the bonds and about Jason Galanis.

13 That is critical evidence to the defendants' knowledge  
14 and intent in this case, all right? Mr. Schwartz knows that  
15 because he told you that the BIT Board had nothing to do with  
16 the WLCC bonds, but he spent a significant part of his closing  
17 trying to get around this evidence because it is devastating  
18 because what it says about Archer's relationship with Jason  
19 Galanis, what Archer knew about Galanis' past are red flags  
20 that had been raised about Galanis during the time period when  
21 Archer was engaging in these bond transactions.

22 Now, Mr. Schwartz said yesterday that Archer told the  
23 BIT Board that Galanis operated as a consultant. Remember that  
24 wasn't good enough for the BIT Board. They wanted no  
25 involvement, very broad, put in the broadest language possible.

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Rebuttal - Mr. Quigley

1 It can't be with any affiliated persons. Mary Moynihan told  
2 you that. The bottom line is in September and October of 2014,  
3 the critical time period of this conspiracy, remember the first  
4 bond issuance happens at the end of August, the second bond  
5 issuance happens the beginning of October, Archer is talking  
6 out of both of his sides of his mouth to the BIT Board about  
7 Jason Galanis.

8 So here is an example, Government Exhibit 760. This  
9 is the September 5, 2014 letter. He says Mr. Galanis will not  
10 be associating in any type of transactions with the Burnham  
11 Group or any member thereof. There is three days later, the  
12 placement agreement for the second bond issuance. Devon Archer  
13 is listed on that document as the buyer. Who is listed as the  
14 representative of the Burnham Group? Look at the one in the  
15 middle. Jason Galanis, all right?

16 He is talking out of both sides of his mouth. Here is  
17 the September 26 letter to the BIT Board. Now, Mr. Schwartz  
18 focused on part of this letter yesterday. He focused on the  
19 part that said in the sentence beginning on the second page,  
20 for avoidance of doubt, ellipses, ellipses. Look at the first  
21 part of the letter, the part he didn't address. You provided  
22 us with assurances regarding nonparticipation of Mr. Jason  
23 Galanis. We believe that you understand our views on the  
24 subject. That is, we wanted an ironclad assurance that going  
25 forward, he will not be involved in any of the Burnham entities

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Rebuttal - Mr. Quigley

1 and affiliated persons, not be involved, not -- can't just have  
2 an ownership interest, not be involved. That is what they  
3 wanted.

4 How did he answer it? Confirmed.

5 What is he doing at this exact same time? Well after  
6 he repeats this confirmation in person, five days later, on  
7 October 1, 2014, what is he doing the same day, the same  
8 morning? He is buying Wakpamni bonds in a deal that Jason  
9 Galanis put together, all right? These are two emails with  
10 Morgan Stanley, but this is the day he closed on the second  
11 tranche of bonds. He is talking out of both sides of his  
12 mouth.

13 Mr. Schwartz yesterday tried to say he focused on the  
14 language about sourcing deals and said okay, he didn't really  
15 source any deals after that. Guess what? That is wrong, too,  
16 okay, because he did source deals, Galanis did to Burnham.

17 One of the most obvious one is the final tranche of  
18 Wakpamni bonds that happened six months after this, in April of  
19 2015. Remember they bought Atlantic Asset Management, Galanis,  
20 there is an email where he tells Archer about buying Atlantic  
21 Asset Management. They buy it, and in two weeks Atlantic, lo  
22 and behold, purchases \$60 million in Wakpamni bonds that OSERS,  
23 the Nebraska school teachers, Mike Smith didn't want it, didn't  
24 know they wanted to buy it, don't want it in their account.

25 Burnham sourced that deal. Jason Galanis sourced that

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Rebuttal - Mr. Quigley

1 deal. Mr. Schwartz said that he was well under way in October  
2 of 2014. It wasn't well under way. They didn't own Atlantic  
3 Asset Management. How could it be well under way when he  
4 didn't own the company that ended up buying the bonds? It  
5 wasn't well under way, a clear violation of the  
6 representations.

7 This is the private placement memorandum. As an  
8 aside, the private placement memorandum for the third bond  
9 issuance to -- Mr. Schwartz and Ms. Notari talked about this  
10 document. By the way, it is clear Burnham Securities is the  
11 entity putting together this third bond issuance, right? But  
12 the defendants tried to say that hey, this shows we were okay  
13 because there is some discussion here about conflicts of  
14 interest and disclosures. There are a couple of problems with  
15 that argument.

16 For one, this document was only for the third and  
17 final issuance, not put out for the first issuance. Moreover,  
18 there is no evidence that it got sent to investors. Remember  
19 there was testimony about Tim Anderson about this was in draft  
20 form. There is no evidence that Archer and Cooney ever saw  
21 this document, so any disclosures that were in there, there was  
22 no reason to be aware or have notice of, to think those things  
23 were being disclosed.

24 Let's talk about how else Jason Galanis continued to  
25 be involved with Burnham after October 1, 2014. This is

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Rebuttal - Mr. Quigley

1 defense exhibit, one of their favorites, it is the Teneo  
2 presentation, okay? This shows a couple of things, but one of  
3 them, the second guy on the email, this is from July 18, 2015,  
4 who is No. 2 on the email right after Devon Archer, Jason at  
5 Burnham Equity Partners dot com. That is Jason Galanis' email  
6 address. You see a ton of emails in this case where he uses  
7 that address, where it is clearly him, Government Exhibit 2074,  
8 2079, 2099, to name a few.

9 So nine months after the representations to the BIT  
10 Board, Devon Archer is well aware Jason Galanis is still using  
11 the Burnham email address and this presentation is about  
12 Burnham. It is all about Burnham. So let's put the BIT Board  
13 to the side for a second, and I want to talk about this  
14 presentation.

15 Yesterday Mr. Schwartz made the point that no one --  
16 this shows Devon Archer's good faith because no one involved  
17 in this, was submitted to this presentation, would have put  
18 together this presentation, would have been involved in a  
19 fraud. That is just plain wrong because look who else is on  
20 this email? Jason Galanis, he is a fraudster. Hugh Dunkerley,  
21 no dispute he is a fraudster.

22 This was part of their plan. This was how they were  
23 going to get the payoff. This was the whole point of the  
24 Wakpamni bonds. Use the bonds, and there is an email, this is  
25 a very revealing email from a few months before this. Galanis'

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Rebuttal - Mr. Quigley

1 plan, the rest of the plan, with scale, scale, scale, at first  
2 appearance of scale, and then actual scale deriving from that  
3 send to his two partners, Archer and Cooney.

4 That is Government Exhibit 2069. The Teneo  
5 presentation is an example of an effort to create appearance of  
6 scale. Now, we'll provide -- they used the bonds to do that.  
7 This is Page 4 of the Teneo presentation. Remember I talked  
8 about this with Mr. Dunkerley on his redirect, and the  
9 important area of this presentation, right, is only from  
10 Burnham down to Bonwick Capital because the stuff on the left,  
11 right, the Burnham Legacy from Moellis down to Apollo, that is  
12 all stuff Mr. Dunkerley testified from Drexel Burnham Lambert  
13 in the 1980's that had nothing to do with the roll-up plan.

14 Everything from Gero Bank and to whatever, Apollo,  
15 okay, those are planned acquisitions that never happened  
16 because the whole thing fell apart. The only entities that  
17 matter are Burnham, Barrow Life, Atlantic Asset Management,  
18 Fondinvest and Bonwick Capital. You know all about how Burnham  
19 was involved in the bonds. They were the placement agent, and  
20 Archer used his bonds to help Burnham meet their net capital  
21 requirements. You heard about that from the FINRA witness  
22 again to try to help them stay in business. FINRA eventually  
23 said you can't count them. They tried to count them and they  
24 tried to count them for many months.

25 Valor Life was purchased with bond proceeds. Remember



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Rebuttal - Mr. Quigley

1 we saw the big payment used buy to Valor Life. Atlantic Asset  
2 Management I talked about used to buy without the knowledge of  
3 Omaha school teachers, the entirety, \$16 million of the final  
4 tranche of the Wakpamni bonds.

5 Fundinvest, 512, Dunkerley told you about it a week  
6 after that \$60 million comes in, \$5 million or \$66 million goes  
7 out in the bonds provided to buy Fondinvest. Fundinvest was  
8 purchased with bond proceeds.

9 Bonwick Capital, again Cooney's bonds were used to  
10 keep Bonwick Capital in business to try to help it meet its  
11 FINRA net capital requirements. For the entities that actually  
12 matter, the bonds play a critical part of the roll-up plan.

13 The slide shows actually how integral, AAA, how  
14 critical the bonds were to the roll-up plan. It also shows  
15 what Devon Archer hoped to get out of this. This is his  
16 motive, to roll up all these companies with the help the bonds  
17 and to sell them and give a big payday, a big payday by  
18 creating an appearance of scale in large measure through the  
19 WLCC bonds.

20 So let's shift back to the BIT Board for one second.  
21 Now, you heard about Mr. Archer said after Jason Galanis'  
22 arrest in September of 2015, Mr. Archer met with the BIT Board  
23 again and again and again to try to make things right. I guess  
24 Mr. Schwartz would say that was literally true because you know  
25 he met with them a total of three times. There were a number

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Rebuttal - Mr. Quigley

1 of toasts and misrepresentations in those meetings, and I won't  
2 address them all now.

3 Let's talk about one, the final meeting, February  
4 2016. Ms. Moynihan asked Mr. Archer if he had any involvement  
5 with any of the events in SEC complaints against Atlantic. How  
6 did Archer respond? No, no involvement whatsoever, no  
7 involvement whatsoever.

8 And we don't deny he wasn't one of the people named in  
9 the complaint. When he was asked point blank, no involvement  
10 whatsoever. That was a lie, okay? Because you know that he  
11 was involved in the first bond issuance. Remember the Atlantic  
12 complaint deal with the first bond issuance and third bond  
13 issue? Hugh Dunkerley testified that Archer was part of the  
14 investment committee at Burnham that approved Burnham's  
15 involvement in that issuance.

16 This email, Government Exhibit 2218, supports that.  
17 There is right before the bonds are issued, he is getting  
18 forwarding information about the bonds, getting forwarded  
19 information from the commitment committee memo and all kinds of  
20 information in connection with the investment committee.

21 The involvement in the third bond issuance, he was  
22 involved in that one, too. Government Exhibit 2078, right.  
23 This is an email from, about -- this is August -- April 14th,  
24 2015, the day before Atlantic put \$60 million into the OSERS  
25 account, the global yield opportunity fund. What is this email

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Rebuttal - Mr. Quigley

1 about? The Atlantic Global Yield Opportunity Fund, okay?

2 And Devon Archer is asking how do we get ahead of  
3 Jason Galanis in the email? How do we get ahead of Don  
4 Trotter? There was testimony Don Trotter was an employee of  
5 Atlantic. He lives in Nebraska. Daniel Turney talked about  
6 that. How do we get ahead? We just was a head of this  
7 company. How do we get ahead of these new guys, and Galanis  
8 responds, looks like the plan is winning hearts and minds, is  
9 based in Connecticut. Atlantic is based in Connecticut, yet he  
10 is not sure what floats the boat of the Conecticut guys.

11 The next day, Atlantic purchases those bonds on behalf  
12 of Galanis and behalf of Archer and are used in furtherance of  
13 the roll-up plan. No involvement whatsoever? I don't think  
14 so.

15 So let's talk about the lies to the banks. Mr.  
16 Schwartz made an argument yesterday that these lies cannot be  
17 considered in connection with the purchase or sale of a  
18 security. I want to be clear about one thing regarding this  
19 evidence. The defendants are charged in Count 2 with, among  
20 other things, participating in a scheme to defraud related to  
21 the Wakpamni bonds. I expect Judge Abrams will instruct you  
22 the Wakpamni bonds are a security within the meaning of the  
23 law. The defendant's lies are smack dab in the middle of this  
24 scheme about these bonds, provide powerful evidence of their  
25 knowledge and intent. Remember we are talking a October 2014,

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Rebuttal - Mr. Quigley

1 snack dab in the middle of the scheme, and the first and second  
2 bond issuance, before the third bond issuance.

3 So let's talk about the statements to Morgan Stanley  
4 right here in Manhattan. Now, Mr. Schwartz, Government Exhibit  
5 2053, right? This is the one where he is asked, Devon Archer  
6 is asked who is to buy in more detail how -- (inaudible) --  
7 this issuance and how is the 15 million, the 15 million in bonds  
8 that Archer bought with money from Jason Galanis and ultimately  
9 from the bond proceeds. How is the 15 million generated that  
10 was used to purchase the bonds? He says it was generated  
11 through the purchase of real estate.

12 Mr. Schwartz tried to twist and turn all around to try  
13 to explain how this meant something other than what it means.  
14 How is the money generated? It means where did he get this  
15 money. There is no evidence that Archer had a reasonable  
16 belief -- first of all, the fact the money came from real  
17 estate is just a lie. At best, it is incorrect. There is no  
18 evidence to support the argument that Jason Galanis -- Devon  
19 Archer had any reasonable belief that this money actually came  
20 from some real estate deal involving Jason Galanis.

21 Remember Jason Galanis did not have 15 or \$20 million  
22 worth of cash this time, and the best Mr. Schwartz can do is  
23 point to some emails from 10 months, 11 months prior to this in  
24 2013 and 2014 that simply referred to a real estate in general,  
25 to a circular about a real estate investment, that is like

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Rebuttal - Mr. Quigley

1 something you get as junk mail, and to some testimony that once  
2 upon a time Galanis was involved with a hotel in Miami.

3 Ladies and gentlemen, the case has literally of  
4 hundreds if not thousands of documents. If there was some  
5 evidence supporting the idea Jason Galanis was involved in a  
6 legitimate trial estate transaction, or support Mr. Archer's  
7 belief in that, do you think you would have seen it?

8 (Continued on next page)

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I6R7GAL5

Rebuttal - Mr. Quigley

1  
2 MR. QUIGLEY: And another way you know this e-mail is  
3 false is the answer to the first question. Right? It says who  
4 is providing the detail into how you came to know of the  
5 issues? He says Burnham Financial packaged the deal of which I  
6 am a shareholder. Yeah, OK, right, Burnham was on the  
7 placement documents, but Hugh Dunkerley testified he didn't  
8 talk to Devon Archer about this deal. He was, in theory, the  
9 lead investment banker at Burnham. This was Jason Galanis  
10 calling Archer up. Right? This was not -- there was no formal  
11 involvement at Burnham Financial in packaging the issuance;  
12 this was Jason Galanis. And Archer is hiding that here; that's  
13 what he is doing in this e-mail.

14 And that's just -- that's just 2053. Remember, there  
15 is the other e-mail that's more detailed from Catharine  
16 Driever, where it says Devon Archer a shareholder of Burnham  
17 Financial, Burnham Financial packaged the issuance for the  
18 Wakpamni bonds, some of the bankers at Burnham came to Devon  
19 with the bonds and he agreed to purchase them. The funds to  
20 purchase the bonds were from real estate sales through his  
21 business, Rosemont Seneca Bohai.

22 And that is completely false. And their response to  
23 that is, well, Catharine Driever doesn't remember a telephone  
24 conversation she had four years ago. And that's right, she  
25 doesn't. But she also testified that it was not her practice

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Rebuttal - Mr. Quigley

1 to write things down unless a client actually told them to her.  
2 She says in this e-mail just got the following from the client.  
3 It's here that 344 in the upper left-hand corner is her prior  
4 e-mail, and it's clear she got the issue information about  
5 Flikmedia in the interim, so it's clear she talked to the  
6 client between these two e-mails.

7 But there is something else, there is another e-mail  
8 that Mr. Schwartz didn't show you yesterday, and that's  
9 Government Exhibit 1226. It's an e-mail from a couple days  
10 later between Mr. Archer and a guy named John Tonzola at  
11 Deutsche Bank. And Mr. Tonzola asked a slightly different  
12 question: How did the entity come to own these bonds? Again,  
13 real estate sale. No evidence that Mr. Archer was involved in  
14 any real estate sale at this time. The evidence is that the  
15 bonds came from Jason Galanis. This is also completely false.  
16 He doubles down on the lie, that is critical evidence of his  
17 intent. Mr. Schwartz again completely ignored this e-mail.

18 So, why the lies about these bonds? Why the lies by  
19 Jason Galanis with the BIT board the same day he was buying the  
20 bonds? Because Devon Archer knew he was in the fraud, because  
21 he knew real answers would not have allowed him to deposit  
22 those bonds at Morgan Stanley or Deutsche Bank. So, that's Mr.  
23 Archer.

24 Now, Bevan Cooney lied too. Ms. Notari talked a lot  
25 about this this morning. Again, I would argue that the reason

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Rebuttal - Mr. Quigley

1 she spent so much time on it is because she knows it's pretty  
2 bad evidence for her client in terms of his knowledge and  
3 intent.

4 So, remember Cooney got a wire from Thorsdale --  
5 sorry -- from Wealth Assurance for \$3.8 million on November 12,  
6 2014. That's bond proceeds. OK? Then he sends it to Camden  
7 Escrow.

8 So back up two slides. And he gets asked: What's  
9 that wire for? And he says: It's to open an escrow for a real  
10 estate purchase. Remember, you saw the escrow documents, some  
11 of the documents this morning from Ms. Notari. He is  
12 purporting to buy 1920 Bel Air, Jason Galanis' home. He was  
13 not buying a home that Jason Galanis lived in with money from  
14 Jason Galanis. That is not what happened. And Ms. Notari this  
15 morning said, oh, maybe it was a loan, maybe it was a refi.

16 Here is Mr. Cooney. This is not Hugh Dunkerley. It's  
17 not Jason Galanis. This is defendant Cooney; it's for a real  
18 estate purchase.

19 And then later on what does he say about the same \$3.8  
20 million? He said he asked his assistants please send me the  
21 wire info on the \$3.9 million that came into my account and  
22 went out to Camden Escrow for the down payment on 1920 Bel Air.  
23 Not for a loan, not for a refi. This was a transaction  
24 designed to conceal the fact that bond proceeds were being  
25 used, were being misappropriated, were being recycled. And



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Rebuttal - Mr. Quigley

1 Bevan Cooney was in the middle of it and he lied about it.

2 And, you know, Ms. Notari put up this e-mail. This is  
3 one of the e-mails she put up this morning as evidence of  
4 Cooney's supposed good faith with respect to this transaction.

5 So, this is from later on, and he says in February of  
6 2016 -- almost a year and a half after the deal -- he says  
7 Vanessa, I found this in my file for taxes for last year -- it  
8 sound extremely plausible -- Thorsdale loaned me the money for  
9 a short period of time. It was a failed real estate  
10 transaction. That was the part Ms. Notari was really focused  
11 on. The attachment is a document dated January 2015 from  
12 Calvert, purporting that Calvert was involved in this  
13 transaction, Calvert was the lender.

14 You guys know full well by now Calvert is a fake  
15 company that didn't exist until ten months after this January  
16 17, 2015 letter was supposedly written. And Ms. Notari tried  
17 to say -- we will talk more about Calvert in a few minutes --  
18 but Ms. Notari tried to say that Hugh Dunkerley testified that  
19 the only people who knew about Calvert were him, Gary Hirst and  
20 Jason Galanis. And that's just wrong. You just have to look  
21 at the transcript to figure that out. Because what Hugh  
22 Dunkerley said he was the only person he spoke to -- he spoke  
23 to -- about Calvert were Hirst and Galanis.

24 Francisco Martin knew Calvert was fake; he knew all  
25 about it; he created it. Hugh Dunkerley never spoke to him

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Rebuttal - Mr. Quigley

1 about Calvert. OK? Just because Hugh Dunkerley only spoke to  
2 Calvert -- about the certainty of Calvert -- doesn't mean --

3 MR. SCHWARTZ: Objection. Misstates the testimony.

4 THE COURT: -- doesn't mean other people knew that  
5 Calvert was fake.

6 MR. SCHWARTZ: It misstates the testimony.

7 THE COURT: Ladies and gentlemen, it's going to be up  
8 to you to determine whether the lawyers' arguments are true to  
9 the record. And, again, you will be permitted to request any  
10 testimony that you'd like read back.

11 So, I'm going to overrule the objection with that  
12 instruction.

13 MR. SCHWARTZ: Thank you.

14 MR. QUIGLEY: Now he also lied to City National Bank.  
15 Again, I'm not going to spend a lot of time on this. But  
16 remember he used the bonds to get a \$1.2 million loan from City  
17 National Bank; he used the bonds as capital. All right?

18 Now, the idea here, the defense argument here is that,  
19 well, City National really knew he didn't have the bonds  
20 because sometime prior to that they put a medallion on his bond  
21 certificate so he could transfer it to Bonwick -- which, as  
22 we've said before was for net capital to keep Bonwick in  
23 business. All right?

24 Now, this was the testimony of Steve Shapiro, and he  
25 says basically Mr. Cooney lied to my face, because the

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Rebuttal - Mr. Quigley

1 medallion does not say or does not say the name of the bond; it  
2 just has the CUSIP, the serial number. And he meets with Steve  
3 Shapiro -- Cooney meets with Steve Shapiro, and he says we're  
4 looking to do a \$1.2 million loan for you. This is the same  
5 day he's getting the bonds' medallion. Cooney agreed. I said  
6 we're looking at using the Code Rebel stock as the primary  
7 source of repayment. OK. Then he says: Is that OK? Yes.  
8 And I said: If something goes wrong with that particular  
9 stock, you're going to liquidate the \$5 million muni bond, the  
10 Wakpamni bond that you hold? Is that correct as well? And he  
11 acknowledged in the affirmative as well.

12 So right at the same time that Cooney unbeknownst to  
13 Steve Shapiro is getting Steve Shapiro to transfer his bond out  
14 of City National he is telling him that, yeah, if this loan  
15 goes south I will use the Wakpamni bond to repay it. That's a  
16 lie.

17 And again Ms. Notari said this morning that the loan,  
18 the \$1.2 million loan, was based only on Code Rebel? That's  
19 Shapiro's testimony. The issuance of the loan was based -- the  
20 loan was based both on the Code Rebel shares and the Wakpamni  
21 bonds, that is correct.

22 All right. Real quickly, it's clear that Steve  
23 Shapiro understood that the Wakpamni bonds -- or believed  
24 falsely, given Mr. Cooney's misstatements -- that the Wakpamni  
25 bonds were still in his possession after this time. All right?

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Rebuttal - Mr. Quigley

1           Here is Government Exhibit 440; you can look at it in  
2           the jury room. He is asking about -- remember, they're trying  
3           to repay the loan. He says can we resell the muni bonds? All  
4           right? He don't know that the muni bonds have long since  
5           dissipated from Mr. Cooney's account.

6           And just to prove that Mr. Cooney was still pretending  
7           to own the Wakpamni bonds, even though he had long since given  
8           them up, this was an exhibit that was introduced this morning  
9           of supposedly his good balance sheet. All right? Still  
10          listing the Wakpamni bonds on his balance sheet as of February  
11          2016.

12          So, let's talk about -- that's the lies to the banks.

13          By the way, Ms. Notari accused us of some bad faith  
14          here, not putting documents in evidence. All right? She said  
15          we hid the ball, we didn't put in Defense Exhibit 3735, which  
16          she claimed somehow helped her client. There is a signed  
17          version of that in evidence as a Government exhibit.

18          MS. NOTARI: Objection. Misstates what I said.

19          MR. QUIGLEY: It's a different document, your Honor.

20          THE COURT: All right. Overruled. The same  
21          instruction I gave you a few minutes ago.

22          MR. QUIGLEY: Government Exhibit 414 at page 4,  
23          already in evidence. So that's wrong.

24          Let's talk about Calvert. Now, again both defense  
25          counsel -- and particularly Ms. Notari -- took the government

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Rebuttal - Mr. Quigley

1 to task for this. This is bad evidence for them. She said  
2 people do not create false documents; they create them with the  
3 intent to pass them to other people. Well, guess who defendant  
4 Cooney passed false documents to. He passed false documents in  
5 this case to the Securities and Exchange Commission, the SEC,  
6 and that fact is undisputed. Right?

7 Here is Government Exhibit 1271. This is a secured  
8 loan agreement supposedly dated from the 2nd of October, 2014,  
9 a year before Calvert even existed, and it's signed by Bevan  
10 Cooney. Signed by Bevan Cooney.

11 And there is a stipulation that this exhibit:  
12 Government Exhibit 1271 are true and accurate copies of  
13 documents produced by to the SEC by Bevan Cooney.

14 And Ms. Notari gets up here and criticizes Hugh  
15 Dunkerley for his creating false documents? But her client  
16 submitted this false Calvert document to the SEC. It's  
17 powerful evidence that he knew -- and this relates to the  
18 bonds -- powerful evidence that he knew that this bond  
19 transaction, these bond proceeds, these bonds were a fraud,  
20 because he needed to cover it up.

21 He also submitted Calvert documents to City National,  
22 he submitted the same backdated Calvert document, dated again  
23 October 2, 2014, a year before Calvert even existed, to City  
24 National on February 28, 2016 as a secured loan agreement for  
25 the bonds. There is no way he signed this document in 2014.

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Rebuttal - Mr. Quigley

1 Calvert didn't exist in 2014.

2 Now, Devon Archer was a little bit smarter with  
3 respect to Calvert. All right? This is an e-mail that  
4 Mr. Schwartz talked about yesterday. But he says -- this is  
5 November 2015 -- these bonds are to be replaced and returned to  
6 Calvert; I wanted to share the below. This is 2015. He is  
7 talking about the Wakpamni bonds that he bought a year earlier.  
8 Calvert did not exist before October 2015. Devon Archer bought  
9 these bonds himself in October 2014. He knows that. You know  
10 that. And why is he talking about returning the bonds to  
11 Calvert? All right? He says the lender and beneficial owner.  
12 Right? Calvert was not the lender and beneficial owner of the  
13 bonds. It didn't exist when he bought the bonds. He knows  
14 that. And Mr. Schwartz' only response to this is to criticize  
15 the government. Yet he wasn't as brazen as Cooney about it,  
16 but he tried to use Calvert too to get rid of the bonds and to  
17 cover up. Remember, this is during the time period when  
18 subpoenas start flying.

19 Mr. Schwartz talked yesterday a lot about how, hey,  
20 you know, the government didn't interview certain witnesses  
21 until a few weeks before trial. There is abundant evidence  
22 that this investigation began in 2015 -- late 2015 -- when  
23 people started getting subpoenas and people started covering  
24 things up and started using entities like Calvert, and Archer  
25 and Cooney were part of it.

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Rebuttal - Mr. Quigley

1           Let's shift topics for a second and talk about Hugh  
2 Dunkerley. OK? So there is a lot of testimony Hugh Dunkerley  
3 didn't know this, Hugh Dunkerley didn't know that, and that's  
4 right, but it doesn't help the defendants. OK? Because I  
5 expect Judge Abrams will instruct you it is not necessary for  
6 the government to show that a defendant was fully informed as  
7 to all details of the conspiracy in order for you to infer  
8 knowledge and intent on his part. To have guilty knowledge, a  
9 defendant need not have known the full extent of the  
10 conspiracy, or all of the activities of all of the conspiracy's  
11 participants. And that's some more law. The duration and  
12 extent of a defendant's participation has no bearing on the  
13 issue of that defendant's guilt. Conspirators can perform  
14 separate and distinct acts.

15           And Hugh Dunkerley got on the witness stand, and even  
16 though he may not have understood everything, even though Jason  
17 Galanis in August 2014, did he ever tell him, hey, we're  
18 stealing the bond proceeds? No, he never told him that because  
19 that's not the way it works in the real world; people don't  
20 tell each other explicitly they're committing a fraud.

21           Even though he might not have been fully informed  
22 about every detail of the conspiracy and the scheme, he is  
23 still guilty. And this law applies to these defendants as  
24 well.

25           I said earlier when I was talking about how Jason

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Rebuttal - Mr. Quigley

1 Galanis never met the WLCC, never met the pension funds, in a  
2 big conspiracy case like this one, different defendants play  
3 different roles.

4 Let's also talk about Tim Anderson for a second.  
5 There is a lot of talk about Tim Anderson about how his  
6 involvement is evidence that shows the defendants' good faith.  
7 OK?

8 To be sure, Tim Anderson was involved in this  
9 transaction, right, and he was the lawyer, he was the lead  
10 lawyer, and he didn't see anything wrong. But there was a lot  
11 he didn't know. OK? There is a lot he didn't know, that these  
12 defendants -- and particularly Archer and Cooney knew -- John  
13 Galanis knew also -- what if anything was your understanding of  
14 Burnham Securities' relationship with Hughes Capital Management  
15 at the time? They had a working relationship.

16 You know that Jason Galanis was intimately involved in  
17 both Burnham's placement of the bonds and he took over through  
18 Michelle Morton Hughes Capital at this time. They had a common  
19 ownership. OK? Burnham didn't identify Hughes Capital  
20 Management as an advisor who advises funds. The same people  
21 who were controlling Burnham from behind the scenes took over  
22 Hughes Capital Management.

23 Now he also spoke to Yanni Galanis.  
24 "Q. Now, at this time in August of 2014, had you heard of an  
25 entity called Sovereign Nations Development Corporation?"



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Rebuttal - Mr. Quigley

1 Remember this was the entity that Yanni Galanis put  
2 \$2.3 million into, right?

3 "A. Never heard of it.

4 "Q. Did Yanni Galanis mention it to you at that time?

5 "A. No.

6 "Q. Or ever?

7 "A. No.

8 Did he know about how Archer -- he knew Archer and  
9 Cooney eventually bought the second issuance. Did he know how  
10 they got involved in it? It was a Burnham client, he was  
11 excited it occurred with the first bond issue, he wanted to be  
12 supportive.

13 Did he know that money was coming from Jason Galanis,  
14 the money he was using was coming from Jason Galanis? Did he  
15 know the money that they were using was coming from the  
16 proceeds of the first issuance? Of course not.

17 "Q. At the time did you have any understanding of where Devon  
18 Archer obtained the \$15 million to obtain the second issuance  
19 of the bonds?

20 "A. No.

21 Third issuance:

22 "Q. Did you have any understanding of who would be the  
23 investor or investors in this series of bonds?

24 "A. Atlantic Asset Management.

25 "Q. At the time did you have any understanding of who owned

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Rebuttal - Mr. Quigley

1 Atlantic Asset Management?

2 "A. I did not."

3 But you do. And these defendants do. They knew that  
4 two weeks before Atlantic purchased the third tranche of bonds  
5 Jason Galanis, Devon Archer had bought them. Right? There is  
6 an e-mail on April 2 where they congratulate each other about  
7 buying Burnham. Valor will formally provide the money, but  
8 these defendants and their partners in crime were in control of  
9 that company. You saw that in the full preppy assault on the  
10 Connecticut e-mail a few minutes ago.

11 So Tim Anderson, his view is of limited value because  
12 he didn't know the key facts. Nobody came to him and said,  
13 hey, Tim, it's a massive fraud, so of course he thought it was  
14 legal.

15 And the other thing is -- this is related -- garbage  
16 in, garbage out. Who is Tim Anderson getting his information  
17 from? He is getting it from John and Jason Galanis. Do you  
18 think they're telling him that they're going to steal the  
19 proceeds? That's ridiculous. He said Jason and Yanni told him  
20 at the end of July that the buyer wasn't quite there yet. This  
21 is for the first tranche. Do you know what that means? They  
22 want bought Hughes yet; they were waiting to close the Hughes  
23 transaction so they could shove all those \$28 million of bonds  
24 into Hughes. He's being lied to. Yanni told him WAPC was a  
25 BVI subsidiary of Wealth Assurance. That's false too. Garbage

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Rebuttal - Mr. Quigley

1 in, garbage out.

2 Now, shifting topics. You heard a bunch of arguments  
3 about how certain defendants have more involved than others,  
4 and as we alluded to in our main summation it doesn't matter;  
5 you should reject that argument. But it does bring up the fact  
6 that with respect to the substantive count, Count Two, a  
7 defendant can be found guilty as a principal who committed the  
8 crime of securities fraud, or alternatively can be found guilty  
9 of something called aiding and abetting if they helped someone  
10 else commit the crime or willfully caused the crime.

11 And I'm not going to go through the law here, because  
12 you're hear it from Judge Abrams in a few minutes, but just I  
13 alert you to that portion of the charge, that there are  
14 multiple ways to be found guilty of Count Two.

15 Mr. Schwartz talked yesterday -- and Ms. Notari a  
16 little bit this morning -- about discretionary and how it's  
17 used by these defendants. OK, said it meant assets under  
18 management. These defendants know in the context of this case  
19 one thing it certainly meant was money they could use on  
20 themselves and as their own interests. And discretionary that  
21 money was provided via the Wakpamni bonds.

22 The Government Exhibit 2021 is a perfect example,  
23 Archer, Cooney and Galanis are talking about Fondinvest, which  
24 they eventually bought using Wakpamni bonds, and Archer says we  
25 have discretionary funds in our command soonest.

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Rebuttal - Mr. Quigley

1 Galanis says I'm laser focused on summer cash hole and  
2 discretionary. I don't need anymore deals until we can pull  
3 triggers ourselves.

4 And how did they get discretionary to buy Fondinvest?  
5 Six months later, on April 2015, they issued the third tranche  
6 of bonds and turned around and used that money to buy  
7 Fondinvest. Look at Exhibit 512, the WAPC bank records. You  
8 see the 16 million coming in, and you see it go right back out  
9 around and out to a company called New Line Trading, which  
10 Dunkerley testified was a special purpose vehicle used to buy  
11 Fondinvest.

12 Now, Mr. Schwartz yesterday -- and Miss Notari this  
13 morning -- and even Mr. Touger a little bit -- took a bunch of  
14 potshots at the government's investigation. I'm not going to  
15 go tit for tat here. We're not focused on hamburger patties,  
16 or Marisa Tomei movies, or The Blair Witch Project. We are  
17 focused on the evidence in the case. But I want to respond to  
18 this just briefly. All right? And I already talked about the  
19 documents, how this is a document case, and you know the  
20 government's investigation was well under way even in late  
21 2015.

22 Mr. Schwartz also continued to take some potshots  
23 about Agent Kendall, particularly about the \$903,000 transfer  
24 credit for the second bond issuance interest payments on the  
25 summary charts that goes in through Rosemont Seneca Bohai. He

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Rebuttal - Mr. Quigley

1 said, oh, that was horrible.

2           Guess what, the money went into Rosemont Seneca Bohai.  
3 The transaction was reversed at Morgan Stanley. Do you know  
4 how you know that? Mr. Schwartz's own witness, Mr. Fliegler,  
5 the consultant from Duff & Meyers testified about that. And  
6 his chart shows that \$903,000 going into Rosemont Seneca Bohai.  
7 It was internally reversed at Morgan Stanley. There is nothing  
8 inappropriate about that. It was there for 11 days, from  
9 October 1st to October 12th. There is nothing inappropriate in  
10 a chart about showing where the money actually went and when it  
11 went there. That's a ridiculous and low thing for Mr. Schwartz  
12 to do, particularly since it's consistent with what his own  
13 witness said.

14           Now, another argument Mr. Schwartz made was that Mr.  
15 Archer was used and didn't get anything out of this. And  
16 that's irrelevant and ridiculous for a couple of reasons.  
17 Number one, Mr. Archer was well aware that Jason Galanis wanted  
18 to use his profile to his advantage.

19           Here is Government Exhibit 2211. With Archer's new  
20 enterprise -- this is an e-mail that Mr. Archer was on --  
21 having full control over this platform, will lead to us world  
22 domination on p/e trades we are looking to do. Aligns the  
23 media and political stature Mr. Archer now enjoys with the  
24 financial stature. Add the golden smile, and we could be  
25 massively effective. Mr. Archer is well aware of what Jason

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Rebuttal - Mr. Quigley

1 Galanis wants him for, and he continues to do business. This  
2 June 2014, this is early in their relationship; they continue  
3 to do business for another 15 months until Jason Galanis'  
4 arrest. All right?

5 Another one. We saw this one already. But, hey,  
6 we're going to use Devon's cache to buy an apartment. Again,  
7 Mr. Archer is cc'd on the e-mail. No secret that Jason Galanis  
8 is using his cache and frankly his office. He says -- Cliff  
9 Wolff says, look out, you might be getting some mail from this  
10 company.

11 Here is another one. Again this one is actually in  
12 connection with the bonds. June 2014. Jason Galanis, Devon  
13 Archer and Bevan Cooney. Archer, the Indians signed ours our  
14 engagement. Here is our counsel from Greenberg. May be good  
15 for GT to know that you are associated with the insurance  
16 company at the right moment. Not necessary but it might be  
17 icing on the cake. Flash that golden smile. That's what he's  
18 saying, flash those credentials. That is one thing Jason  
19 Galanis saw in Devon Archer, but it's not a defense, because  
20 Devon Archer was well aware of it; he knew this was how he  
21 being used, and he hoped to make out with a big pay day  
22 eventually.

23 And you know this is what he expected to get out of  
24 the bonds, a huge pay off from the sale of Burnham. He talked  
25 about the presentation. And he was making money already. This

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Rebuttal - Mr. Quigley

1 got conveniently got left off their chart from their summary  
2 witness. This is the last exhibit the government put in,  
3 Wealth Assurance Holdings company -- which Jason Galanis was an  
4 advisor -- a company in which all the key players in this case  
5 were involved in -- Dunkerley, Galanis, Jason Sugarman -- he  
6 gets put on the board of directors of that company and gets  
7 \$5.3 --

8 MR. TOUGER: I'm going to object to what Galanis did  
9 without designation.

10 MR. QUIGLEY: Sorry, I will correct that.

11 Jason Galanis is an advisor, and the board of  
12 directors is Devon Archer, Hugh Dunkerley and Jason Sugarman.  
13 Dunkerley testified about that.

14 His stock is worth \$5.3 million. You're telling me he  
15 didn't expect to get anything out of this? He did it for free?  
16 Yeah, it all came crumbling down, but he certainly expected to  
17 make a lot of money out of the sale of these companies and out  
18 of his involvement with these companies.

19 And, you know, Mr. Schwartz talked yesterday about how  
20 it was implausible -- implausible -- that he would be involved  
21 in a fraud because he wouldn't loot Wealth Assurance Holdings,  
22 a company that he was a director of.

23 He has it backwards. He wasn't looting Wealth  
24 Assurance Holdings; he was involved in looting the pension  
25 funds and the Wakpamni people to get money to build up Wealth

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Rebuttal - Mr. Quigley

1 Assurance Holdings. That was the purpose of the fraud, to  
2 build up Burnham and Wealth Assurance Holdings. That's what  
3 they did, as you saw in the Teneo presentation. So he wasn't  
4 involved in looting the company he was the director of. The  
5 fraud here involved looting other people, the victims of the  
6 scheme.

7 MR. SCHWARTZ: Your Honor, that misstates my argument.  
8 My argument was that the Ballybunion and Valorlife frauds  
9 looted the company.

10 THE COURT: The objection is noted.

11 MR. SCHWARTZ: Thank you.

12 MR. QUIGLEY: Mr. Schwartz also showed you yesterday a  
13 couple of e-mails that he showed Jason Galanis controlling  
14 access to Devon Archer. One of them was Defense Exhibit 4179.

15 You have no idea what this e-mail is about. There is  
16 no context for this e-mail. It's similar to the Cooney  
17 recording you heard, two guys talking in a bar for three  
18 minutes, you have no idea what they're talking about. Even Ms.  
19 Notari admitted this morning they were kicking back a few.

20 But what is interesting about this e-mail is a couple  
21 things. Number one, Mr. Schwartz made a point yesterday to say  
22 that Gary Hirst and Devon Archer never communicated together,  
23 but again although this is not a communication between them,  
24 they are both on this communication.

25 And then Nordgren, Matt Nordgren is the guy that Devon



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Rebuttal - Mr. Quigley

1 Archer has a conversation with two weeks later -- this is after  
2 his representations to Burnham -- Government Exhibit 2066 --  
3 over at Burnham we have some regulatory issues with JG -- Jason  
4 Galanis -- so can't mention his name. So he's clearly aware  
5 that Jason Galanis had a lot of bad issues. He continued to do  
6 business with him; he continued to do highly suspicious  
7 transactions with him; and he claims he was duped. Don't buy  
8 it.

9 Let's talk finally a little bit about John Galanis.

10 John Galanis -- you have seen a lot of these e-mails  
11 already -- but was the driver of this deal. OK? He was sent  
12 to Las Vegas. He went to Las Vegas. He met with the WLCC. He  
13 met with Tim Anderson. He was the driver of this deal. All  
14 right? He sends out -- this is April 2014 -- an e-mail about  
15 tribal bonds, and he is listing --

16 MR. TOUGER: Objection, your Honor. There is no  
17 testimony that he was sent to Las Vegas by anybody.

18 MR. QUIGLEY: I said Yanni Galanis is sending out an  
19 e-mail about tribal bonds on April 15, 2014.

20 THE COURT: All right. And again with respect to the  
21 testimony, your recollection controls.

22 Proceed.

23 MR. QUIGLEY: Again listing the directors of Wealth  
24 Assurance Holdings is Devon Archer, Jason Sugarman, Hugh  
25 Dunkerley.

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Rebuttal - Mr. Quigley

1 Another e-mail. And again this goes to awareness of  
2 who is in the conspiracy. None of these people knew who John  
3 Galanis was? Guess what, John Galanis certainly knew who they  
4 were, because they were his coconspirators.

5 Hugh Dunkerley. All right. Burnham Securities,  
6 deal's coming together. And here, this idea that Mr. Touger  
7 said something like on Monday that John Galanis just put two  
8 people together and stepped back. He's the driver of the deal.  
9 Here are the documents -- some of the documents that he drafted  
10 that you see him sending to Tim Anderson: Source and use of  
11 funds, term sheets, annuity contracts, Burnham municipal  
12 capital final. Those are all for the first bond issuance.  
13 Wakpamni second tranche source and use of funds, proposal for  
14 creating the Wakpamni Town Center, WLCC third tranche, soft  
15 final. A ton of documents; driver of the deal.

16 And obviously we know he got \$2.3 million out of this.  
17 OK? And Mr. Touger on Monday said -- and he said it throughout  
18 the trial -- this was a finders fee anticipated by the parties.  
19 And what I say to that is this was just a secret payment  
20 anticipated by no one. OK?

21 If you look at Government Exhibit 514, this tells you  
22 what was anticipated by the parties. This is a closing  
23 statement for the first bonds. OK? You see it's blown up  
24 here. All right? There is going to be \$24 million -- sorry --  
25 \$22 million is going to be used to purchase an annuity, and

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Rebuttal - Mr. Quigley

1 then they are going to spend about \$500,000 on closing costs.  
2 \$6,000 to U.S. National Bank, \$75,000 to Greenberg Traurig,  
3 \$250,000 to Burnham. You can read it in the jury room; I'm not  
4 going to waste your time. Bottom line there is no \$2.3 million  
5 fee to John Galanis anywhere on that document, which is what  
6 the parties anticipated.

7 And John Galanis knew that well. Do you know why?  
8 Because he had come up with this funding scheme.

9 This is Government Exhibit 1304, and it's a document  
10 John Galanis sends to Steven Haynes, Tim Anderson on June 16 of  
11 2014, and this is source and use of funds version 15. OK? And  
12 it lists -- it lists right on here that the closing costs are  
13 going to be \$500,000, which in fact they actually were. He was  
14 the driver of this deal. OK? \$500,000. Nowhere in here is  
15 there any talk about a \$2.3 million payment to John Galanis.  
16 All right?

17 And you know that such a payment would make no sense,  
18 OK, because, think about it, they issued roughly \$24 or 28  
19 million in bonds; they've got to pay back principal and  
20 interest on those bonds over the life of the bonds over ten  
21 years. They're not going to go \$2.3 million in the hole right  
22 off the bat to one person. They're not going to pay one person  
23 ten times, five times what anyone else in the transaction was  
24 getting. Burnham was getting \$250,000; that was the highest  
25 fee. They're not going to give John Galanis ten times that.

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Rebuttal - Mr. Quigley

1 But the reason you know that it was not anticipated by the  
2 parties is because no one knew about it. No one knew about the  
3 payment; no one knew about Sovereign Nations. Mr. Raines:  
4 "Q. You weren't aware that John Galanis got \$2.3 million of  
5 the bond proceeds, were you?

6 "A. No."

7 How did John Galanis get it? Fake companies, fake  
8 documents. He created Sovereign Nations Development Corp. on  
9 August 21, 2014. It's not John Galanis creating that company.  
10 It's his minnion, Mark McMillan, six days before the bond  
11 issuance, right before he creates this company.

12 All right? Back to Tim Anderson, you saw this before,  
13 but he never heard of Sovereign Nations, never heard of Mark  
14 McMillan. So it's not a payment anticipated by the parties;  
15 it's a secret payment that John Galanis stole. All right?

16 Hugh Dunkerley. Again don't need to know everything  
17 about the conspiracy to be a coconspirator. All right?

18 "Q. Where was that money supposed to go?

19 "A. "Sovereign Nations Development.

20 "Q. Did you have any understanding of what that was?

21 "A. Nope."

22 He actually thought it was associated with the tribe.  
23 Right? Further evidence of John Galanis' fraudulent intent  
24 that he names a company that's designed to help himself to  
25 sound like something that's associated with a Native American

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Rebuttal - Mr. Quigley

1 tribe, Sovereign Nations Development Corp.

2 Raycen Raines never mentioned Sovereign Nations  
3 Development Corp. And you see what happens, money comes in  
4 from the first bond issuance, goes right out to Sovereign  
5 Nations. And McMillan told you that; the charts told you that.

6 How does John Galanis spend that? I mean Mr. Touger  
7 made a big deal about private equity investments and all that.  
8 John Galanis, whatever else you want to say, did not invest it  
9 in private equity. John Galanis is not an private equity  
10 investment. This is an investment in John Galanis by John  
11 Galanis, stealing the bond proceeds.

12 Look at all the other steps he took. He sent e-mails  
13 to McMillan, to his minion, using an attorney's e-mail  
14 address. McMillan testified about that. Government Exhibit  
15 3400, transcript 2845. He uses Barry Feiner's e-mail address  
16 to send e-mails.

17 Another thing Mr. Touger said was that no further  
18 payments -- no further payments made to John Galanis after that  
19 \$2.3 million.

20 A couple problems with that argument. Number one, you  
21 can't unring a bell. You can't steal money and then say it  
22 wasn't me because I didn't get any more. He got \$2.3 million.  
23 That's not how it works. But moreover it's also wrong, because  
24 you saw during the time period of the conspiracy John Galanis  
25 got \$235,000 --

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Rebuttal - Mr. Quigley

1 MR. TOUGER: There is nothing in the record about when  
2 those payments were made, none whatsoever. That's a totally  
3 false statement.

4 THE COURT: All right, objection is noted. Please  
5 proceed.

6 MR. QUIGLEY: \$235,000 from John Galanis and \$237,000  
7 to someone named Chandra Galanis. Who is Chandra Galanis?  
8 That's John Galanis' wife. Raycen Raines testified about this.  
9 So John Galanis got a further \$500,000 from Thorsdale.

10 This also, by the way -- if the evidence that came in  
11 yesterday about Jason Galanis and John Galanis being involved  
12 in a prior securities fraud together, if that didn't totally  
13 blow up this argument, the idea that this also undercuts any  
14 argument that Jason Galanis and John Galanis kept their  
15 dealings separate, because here is Thorsdale sending money to  
16 John Galanis, Thorsdale. Jason Galanis sending to John  
17 Galanis. All right? It's more detail on the Sovereign Nations  
18 proceeds.

19 Now one last argument that Mr. Touger addressed,  
20 attempted to blame the victim. Right? And he had a number of  
21 references in his closing on Monday to Raycen Raines, how  
22 Raycen Raines supposedly got some big payment from Sovereign  
23 Nations. OK? Mr. Raines got \$5,000. That's Government  
24 Exhibit 1513. Mr. Touger I think accused the government of  
25 hiding this. He got \$5,000. And you know that what happened

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Rebuttal - Mr. Quigley

1 here is that members of the Wakpamni Lake Community got money  
2 to attend a martial arts camp. OK? What does this show?  
3 Nothing. Except that John Galanis was happy to drop some  
4 breadcrumbs to string his victims along.

5 This was like one quarter of one percent of the money  
6 that John Galanis got from the WLCC bond proceeds. And  
7 Mr. Touger continued to blame the victims by saying that though  
8 a \$60 million fraud occurred, it's really not a big deal, the  
9 tribe had sovereign immunity, the pension funds have a lot of  
10 money anyway, no harm, no fall.

11 It doesn't work. All right? The government, as  
12 Ms. Mermelstein said in her closing, the key here is intent to  
13 deceive, intent to deceive. It does not matter -- I expect  
14 Judge Abrams will give you similar instructions to these in a  
15 few minutes, but the government need not show that the  
16 defendant acted with intent to cause harm. And no amount of  
17 honest belief that the scheme will actually make a profit will  
18 excuse any actions or false representations.

19 And the bottom line is that the victims were harmed.  
20 Again, this was in Ms. Mermelstein's closing -- I'm not going  
21 to go through it in great detail -- but Raycen Raines testified  
22 the prairie is overgrowing, these buildings have never been  
23 completed, no realistic possibility that the warehouse could be  
24 successful in the future to pay back the \$65 million. Broken  
25 dreams, crushed hopes, that's how these defendants left the

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Rebuttal - Mr. Quigley

1 Wakpamni.

2 Mr. Touger also tried on Monday through his  
3 cross-examination of witnesses, pension funds make towns of  
4 money, not a big deal.

5 This is Mike Smith's testimony. Actually, let's stop.  
6 I mean \$16.2 million is a lot of money to anyone. Whatever the  
7 percentage of the overall assets of a pension fund, that's a  
8 ton of money. Think about that. These are school teachers,  
9 these are people who are counting on that pension for the rest  
10 of their lives. Think of how many school teachers' pensions  
11 \$16.2 million could pay, much less \$60 million. All right?

12 And he told you about how this was a very significant  
13 loss. All right? \$16.2 million for the bonds, they had to  
14 unwind the GYOF in a rapid fashion. It's not just stand alone  
15 because you're investing so you a can accrue money over the  
16 lifetime of the members. So, over the lifetime of our members,  
17 that \$25 million would have grown to an excess of \$100 million  
18 to be able to pay the benefits to the members. That money is  
19 gone, and it's gone because of these defendants and their  
20 partners in crime.

21 John Galanis drove this fraud. He drafted many of the  
22 key documents, documents that were the basis of the lies to the  
23 WLCC, misrepresentations that made the fraud possible. He then  
24 lined his own pockets with \$2.35 million the very day after the  
25 first set of bonds were issued.



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Rebuttal - Mr. Quigley

1           And despite making every attempt to hide his  
2 involvement with these transactions, the documentary evidence  
3 is perfectly clear and the testimonial evidence is very clear  
4 from McMillan what John Galanis was doing here.

5           Ladies and gentlemen, back at the beginning of this  
6 trial about five weeks ago Ms. Tekeei stood up here and said at  
7 its core this case is simple: It's about people, and trust,  
8 and lies, and choices made by these defendants. That's what  
9 the last five weeks have been about. It's been about people,  
10 people like the Wakpamni, who are now \$60 million in debt that  
11 they will never be able to pay back, people like the pension  
12 funds who are stuck with millions of dollars in bonds that they  
13 will never be able to sell on their books. And, most of all,  
14 it's about these defendants and the choices they made, choices  
15 that John Galanis made in his initial dealings with the  
16 Wakpamni, lying to them about what would happen with the bonds  
17 so he could line his own pockets with \$2.3 million; choices  
18 made by Devon Archer, Bevan Cooney, to cast their lot with  
19 Jason Galanis -- who everyone knew had a checkered past. I  
20 mean you heard about what would come up on Google when you  
21 checked on Jason Galanis. People knew about his SEC bar. They  
22 chose to hold themselves out to the Wakpamni as legitimate  
23 purchasers of the bonds, even though the money was using, there  
24 was no way Jason Galanis could have provided that to them  
25 absent the first bond issuance. And they chose to lie, lie

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Rebuttal - Mr. Quigley

1 repeatedly, lie in a pattern to banks about those bonds, and  
2 about their friend and partner in crime Jason Galanis.

3 When you go back to the jury room, I ask you to follow  
4 the oath that you swore at the beginning of this trial, to  
5 decide this case without prejudice, or sympathy, without fear  
6 or favor, based on the law and the evidence, and only on the  
7 law and the evidence. If you do that, there is only one  
8 verdict that you can reach that is consistent with the  
9 evidence, and that is that these defendants are guilty as  
10 charged. Thank you.

11 THE COURT: Thank you. So, ladies and gentlemen,  
12 we're going to take a short break now, and I am going to  
13 instruct you on the law, and that will take us to the end of  
14 the day. All right? Thank you.

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16 (Continued on next page)  
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Rebuttal - Mr. Quigley

1 (Jury not present)

2 THE COURT: Everyone can be seated. Let me tell you,  
3 I would recommend dismissing number 7 and 13 now, putting in  
4 number 14 for number 7, and then we would have two alternates,  
5 but I'm not going to do it unless you consent.

6 MR. SCHWARTZ: Can we have a moment?

7 THE COURT: Of course. I'm not pressuring you. It's  
8 just to take the pressure off the jury in terms of deliberation  
9 time.

10 MR. SCHWARTZ: My suggestion, if we agree to that, is  
11 that your Honor make those jurors alternates rather than  
12 release them, just because next week is a complicated week, and  
13 although it's unlikely they will have to be recalled, I am not  
14 sure we want to lose them entirely.

15 MR. QUIGLEY: We would be onboard with that.

16 MR. SCHWARTZ: But let us talk first. Also I do want  
17 to object to one aspect of Mr. Quigley's rebuttal that I do  
18 believe requires curative instruction. I showed yesterday in  
19 my summation a number of e-mails from Jason Galanis to Mr.  
20 Archer and sometimes Mr. Sugarman updating them on the status  
21 of the construction. You will recall they were the pictures of  
22 the bonded warehouse, and they start during the time the bonds  
23 are issued, and they go forward in time all the way up until  
24 August of 2015.

25 The only response that Mr. Quigley gave to that

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Rebuttal - Mr. Quigley

1 argument was that I could have crossed Raycen Raines about that  
2 and I did not. I could not have crossed Raycen Raines on that.  
3 The government from the very first witness in this case has  
4 asked your Honor to impose a rule -- which your Honor has --  
5 which is that I can only cross-examine a witness based on  
6 e-mails that they were on. And I objected to that at the time,  
7 and I objected to that throughout the trial, and I said it was  
8 appropriate as long as an e-mail was coming into evidence that  
9 I could use it with any witness.

10 There was never an e-mail with Devon Archer and Raycen  
11 Raines. The government would not have permitted me -- your  
12 Honor would not have permitted me -- to cross-examine Raycen  
13 Raines on those e-mails. So to suggest that I passed up an  
14 opportunity -- and that's the only response they have to that  
15 argument -- I think is a totally false argument by Mr. Quigley,  
16 and it requires the instruction that I did not have the  
17 opportunity to cross-examine Mr. Raines about those e-mails.

18 MS. MERMELSTEIN: None of that is true. There were a  
19 wildly unreasonable number of speaking objections during the  
20 rebuttal in an effort to give a surrebuttal that were totally  
21 inappropriate, and no further instruction is necessary.

22 What Mr. Schwartz has just characterized about the way  
23 this trial proceeded is false. Those are, let's be clear, a  
24 hundred percent real pictures of the Pine Ridge Reservation and  
25 the buildings. I have been there myself; that is what they

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Rebuttal - Mr. Quigley

1 look like. There is no dispute that they are real. I imagine  
2 you could find them on Google Maps.

3 No one would have objected if Mr. Schwartz wanted to  
4 show a photo of a warehouse being built to Mr. Raines and say  
5 is this the warehouse. No one would have objected. Of course  
6 he could do that. And the defendants -- notwithstanding the  
7 government's repeated efforts to keep them from trying to  
8 impede the government's case -- were free to ask any questions  
9 and show any documents they wanted, and they were never stopped  
10 from doing that in a manner that was appropriate and consistent  
11 with the rules of evidence.

12 So, Mr. Schwartz could have asked that question, he  
13 could have shown that to the witness. There is no dispute that  
14 factually those things are correct. And he didn't do it. And  
15 there is no real reasonable dispute that in fact those are real  
16 e-mails.

17 So the effort to get an instruction and an effort to  
18 get the Court to suggest that there was something improper  
19 about the government's rebuttal is not warranted, and it's  
20 gamesmanship, and it should be rejected.

21 MR. SCHWARTZ: I mean the last thing I will say on  
22 this is literally from the very first witness, from Tim  
23 Anderson, when under our agreed-upon protocol I provided notice  
24 of the exhibits that I intended to use with Mr. Anderson, the  
25 government put in a letter -- it's on the docket -- and they

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Rebuttal - Mr. Quigley

1 said I should not be able to use e-mails that the witness was  
2 not on because they're not a percipient witness. They made the  
3 argument repeatedly throughout the trial, your Honor sustained  
4 those objections, and did not let me use e-mails that an  
5 individual was not on.

6 So, the government can say that I could have done it,  
7 but I couldn't have done it. And they could say they wouldn't  
8 have objected, but they would have objected.

9 And to say that I ought to have tried, you know, and  
10 made this trial five weeks longer by putting in everything that  
11 I wanted to cross someone on rather than respecting the rule  
12 that your Honor had set down, I think that's wrong. And I  
13 think the argument by Mr. Quigley was false. And the fact that  
14 Ms. Mermelstein has been on the Pine Ridge Reservation and  
15 knows those to be actual buildings is totally beside the point.

16 MS. MERMELSTEIN: I'll just note, your Honor, that,  
17 one, it's not beside the point, because what Mr. Schwartz is  
18 suggesting is that I suggested to the jury that these might be  
19 fake, and that is true they might be fake; and the answer is  
20 it's not true; they are not fake; that's not a reasonable  
21 argument. But more than that, the government permitted the  
22 defense counsel to show witnesses the attachments to e-mails  
23 when they weren't on the e-mail, just not the cover e-mail. He  
24 could have shown the photos to the witness who said he lived on  
25 the Pine Ridge Reservation and said "Is this what it looks

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Rebuttal - Mr. Quigley

1 like?" Of course he could have. And he decided not to, in  
2 order to make an argument to the jury that's factually frankly  
3 not correct, and we responded, and that's the end of it.

4 THE COURT: I am not going to instruct the jury on  
5 this point. The objection is noted for the record.

6 Why don't we take five minutes and then come back.  
7 And do let me know, because I want to tell them -- I want to  
8 keep those two after and speak to them right after the charge.  
9 OK?

10 MS. MERMELSTEIN: Yes.

11 MR. SCHWARTZ: Yes.

12 (Recess)

13 THE COURT: Do you have an objection to making  
14 Mr. Miller and Ms. Sanchez alternates number 3 and 4?

15 MR. SCHWARTZ: No, assuming those are the names of the  
16 jurors that we've about discussing.

17 THE COURT: Yes. So Juror 7 and Juror 13 would become  
18 alternates numbers 3 and 4. And just to be clear, does  
19 everyone consent to that?

20 MR. TOUGER: And Juror 14 would become Juror 7.

21 THE COURT: Correct. So just to be clear, Mr.  
22 Schwartz, do you consent to that?

23 MR. SCHWARTZ: I consent.

24 THE COURT: Ms. Notari?

25 MS. NOTARI: Yes.

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Charge

1 THE COURT: Mr. Touger?

2 MR. TOUGER: Yes.

3 THE COURT: Does the government consent?

4 MR. QUIGLEY: No objection, your Honor. Yes.

5 THE COURT: All right. We will bring them in. Thank  
6 you.

7 (Continued on next page)

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Charge

1 (Jury present)

2 THE COURT: Members of the jury, you have now heard  
3 all of the evidence in the case as well as the final arguments  
4 of the parties. You have paid careful attention to the  
5 evidence, and I'm confident that you will act together with  
6 fairness and impartiality to reach a just verdict.

7 Now it is time for me to instruct you as to the law  
8 that governs this case. There are three parts to these  
9 instructions. First, I'm going to give you some general  
10 instructions about your role, and about how you are to decide  
11 the facts of the case. Most of these instructions would apply  
12 to just about any trial. Second, I'll give you some specific  
13 instructions about the legal rules applicable to this  
14 particular case. Third, I will give you some final  
15 instructions about procedures.

16 Listening to these instructions may not be easy. I  
17 will tell you know it will probably go to about 5:15 or so.  
18 It's important, however, that you listen carefully and  
19 concentrate. You will notice that I am reading these  
20 instructions from a prepared text. It would be more lively, no  
21 doubt, if I just improvised, but it's important that I do not  
22 do that. The law is made up of words, and those words are very  
23 carefully chosen. So when I tell you the law, it's critical  
24 that I use exactly the right words.

25 (Continued on next page)

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Charge

1           You'll have copies of what I am reading in the jury  
2 room to consult, so don't worry if you miss a word or two, but  
3 for now listen carefully and try and concentrate on what I am  
4 saying. Of course, you're free to read along as well.

5           My duty at this point is to instruct you as to the  
6 law. It is your duty to accept these instructions of law and  
7 to apply them to the facts as you determine them. With respect  
8 to legal matters, you must take the law as I give it to you.  
9 If any attorney has stated a legal principle different from any  
10 that I state to you in my instructions, it is my instructions  
11 that you must follow.

12           You must not substitute your own notions or opinions  
13 of what the law is or ought to be, but nothing I say is  
14 evidence. If I commented on the evidence at any time, do not  
15 accept my statements in place of your recollection or your  
16 interpretation. It is your recollection and interpretation  
17 that govern. Also do not draw any inference from any of my  
18 rulings. The rulings I made during the trial are no indication  
19 of any view on my part. You should not seek to find from my  
20 rulings any such view or opinion on my part, nor should you  
21 otherwise speculate what I may think.

22           At times I may have directed a witness to be  
23 responsive to questions, to pause when an objection had been  
24 made by counsel or to keep his or her voice up. At times I  
25 asked a question myself. Any questions that I asked or

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Charge

1 instructions that I gave were intended only to clarify the  
2 presentation of evidence.

3 You should draw no inference or conclusion of any  
4 kind, favorable or unfavorable, with respect to any witness or  
5 any party in the case by reason of any comment, question or  
6 instruction of mine, nor should you infer I might have any  
7 views as to the credibility of any witness, as to the weight of  
8 the evidence, or as to how you should decide any issue that is  
9 before you. It is entirely your role.

10 As members of the jury, you are the sole and exclusive  
11 judges of the facts. You pass upon the evidence. You  
12 determine the credibility of the witnesses. You resolve such  
13 conflicts as there may be in the testimony. You draw whatever  
14 reasonable inferences you decide to draw from the facts as you  
15 have determined them. You determine the weight of the  
16 evidence. This is your sworn duty as you have taken the oath  
17 as jurors to determine the facts.

18 As I mentioned, any opinion I might have regarding the  
19 facts is of absolutely no consequence. It is the duty of the  
20 attorneys to object when the other side offers testimony or  
21 other evidence that the attorney believes is not properly  
22 admissible. It is my job to rule on those objections.

23 Therefore, why an objection was made or why I ruled on  
24 it the way I did is not your concern. You should draw no  
25 inference or conclusion from the fact an attorney objects to

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1 any evidence, nor should you draw any inference from the fact I  
2 might have sustained or overruled an objection.

3 From time to time the lawyers and I had conferences  
4 out of your hearing. The conferences involved procedural and  
5 other legal matters, and none of the events related to these  
6 conferences should enter into your deliberations at all.

7 The personalities and conduct of counsel in the  
8 courtroom are also not in any way at issue.

9 Now, I will instruct you on the presumption of  
10 innocence and the government's burden of proof in this case.  
11 The defendants have pleaded not guilty. By doing so, each  
12 defendant denies all of the charges in the indictment. Thus,  
13 the government has the burden of proving the charges against  
14 each of them individually beyond a reasonable doubt.

15 A defendant does not have to prove his innocence. On  
16 the contrary, each defendant is presumed innocent of all the  
17 charges contained in the indictment. This presumption of  
18 innocence was in the defendants' favor at the start of trial.  
19 It continued in their favor throughout the entire trial. It is  
20 in their favor even as I instruct you now and it continues in  
21 their favor during the course of your deliberations in the jury  
22 room.

23 The presumption of innocence is removed if, and only  
24 if, you, as members of the jury, are unanimously satisfied that  
25 the government has sustained its burden of proving the guilt of

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1 a particular defendant as to a particular count of the  
2 indictment beyond a reasonable doubt.

3 The question that naturally comes up is what is a  
4 reasonable doubt? The words almost define themselves. It is a  
5 doubt founded in reason and arising out of the evidence in the  
6 case or the lack of evidence. It is doubt that a reasonable  
7 person has after carefully weighing all the evidence.

8 Reasonable doubt is a doubt that appeals to your  
9 reason, your judgment, your experience, your common sense. If,  
10 after a fair and impartial consideration of all the evidence,  
11 you do not have an abiding conviction of a specific defendant's  
12 guilt with respect to a particular count of the indictment --  
13 in sum, if you have such a doubt as would cause you, as prudent  
14 persons, to hesitate before acting in matters of importance to  
15 yourselves, then you have a reasonable doubt, and in that  
16 circumstance it is your duty to acquit that defendant of that  
17 count.

18 On the other hand, if, after a fair and impartial  
19 consideration of all the evidence, you do have an abiding  
20 belief of a defendant's guilt as to a specific count of the  
21 indictment, such a belief as you would be willing to act upon  
22 without hesitation in important matters in the personal affairs  
23 of your own life, then you have no reasonable doubt, and under  
24 such circumstances it is your duty to convict that defendant of  
25 that count.

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1           One final word on this subject. Reasonable doubt does  
2 not mean beyond all possible doubt. It is practically  
3 impossible for a person to be absolutely and completely  
4 convinced of any disputed fact which by its nature is not  
5 susceptible to mathematical certainty. It follows that the law  
6 in a criminal case is that it is sufficient if the guilt of a  
7 defendant is established beyond a reasonable doubt, not beyond  
8 all possible doubt.

9           For those of you who have served as jurors in civil  
10 cases, it is not a mere preponderance of the evidence standard.  
11 The government's burden is heavier than that. The government  
12 is not required to prove the essential elements of the offense  
13 by any particular number of witnesses. The testimony of a  
14 single witness may be sufficient to convince you beyond a  
15 reasonable doubt of the existence of the essential elements of  
16 the offense you're considering if you believe the witness has  
17 truthfully and accurately related what he or she has told you.

18           Under your oath as jurors, you are not to be swayed by  
19 sympathy or prejudice. You are to be guided solely by the  
20 evidence in this case, and the crucial, bottom-line question  
21 that you must ask yourselves as you sift through the evidence  
22 is has the government proven the guilt of any of the defendants  
23 as to any of the counts beyond a reasonable doubt?

24           It is for you alone to decide whether the government  
25 has proven the defendant, that a defendant is guilty solely on

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1 the basis of the evidence or lack of evidence and subject to  
2 the law as I explain it to you. It must be clear to you that  
3 once you let fear or prejudice or bias or sympathy interfere  
4 with your thinking, there is a risk that you will not arrive at  
5 a true and just verdict.

6 If you have a reasonable doubt as to a defendant's  
7 guilt, you must not hesitate for any reason to find a verdict  
8 of acquittal for that defendant. But, on the other hand, if  
9 you should find that the government has met its burden of  
10 proving a defendant's guilt beyond a reasonable doubt, you  
11 should not hesitate, because of sympathy or any other reason,  
12 to render a verdict of guilty for that defendant.

13 The question of possible punishment of the defendants  
14 is of no concern to the jury and should not enter into or  
15 influence your deliberations. The duty of imposing sentence  
16 rests exclusively upon the Court. Your function is to weigh  
17 the evidence in the case and to determine whether or not any of  
18 the defendants are guilty beyond a reasonable doubt solely upon  
19 the basis of such received. Under your oath as jurors, you  
20 cannot allow a consideration of the punishment which may be  
21 imposed upon a defendant if he is convicted to influence your  
22 verdict in any way or in any sense to enter into your  
23 deliberations.

24 Similarly, it would be improper for you to allow any  
25 feelings you might have about the nature of the crimes charged

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1 to interfere with your decision-making process. Your verdict  
2 must be based exclusively upon the evidence or lack of evidence  
3 presented in this courtroom.

4 In reaching your verdict, you must remember that all  
5 parties stand equal before a jury in the Courts of the United  
6 States. The fact that the government is a party and the  
7 prosecution is brought in the name of the United States does  
8 not entitle the government or its witnesses to any greater  
9 consideration than that afforded to any other party.

10 By the same token, you must give the government no  
11 less deference. It would also be improper for you to consider,  
12 in reaching your decision as to whether the government has  
13 sustain its burden of proof, any personal feelings you may have  
14 about the defendants' race, religion, national origin, gender,  
15 sexual orientation or age. All persons are entitled to the  
16 same presumption of innocence and the government has the same  
17 burden of proof with respect to all persons. Your verdict must  
18 be based solely on the evidence or the lack of evidence.

19 In determining the facts, you must rely upon your own  
20 recollection of the evidence. The evidence in this case is the  
21 sworn testimony of the witnesses, the exhibits received in  
22 evidence and the stipulations of the parties. Testimony that I  
23 have stricken or excluded, however, is not evidence and may not  
24 be considered by you in rendering a verdict. Also if certain  
25 testimony was received for a limited purpose, you must follow



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1 the limiting instruction I gave you and use the evidence only  
2 for the purpose indicated. The only exhibits that are evidence  
3 in this case are those that were received in evidence.  
4 Exhibits marked for identification, but not admitted, are not  
5 evidence, nor are demonstrative aids or materials that were  
6 used only to refresh a witness's recollection.

7 As I told you at the start of this case, statements  
8 and arguments by lawyers are not evidence because the lawyers  
9 are not witnesses. What they have said to you in their opening  
10 statements and in their summations is intended to help you  
11 understand the evidence to reach your verdict. However, if  
12 your recollection of the facts differs from the lawyers'  
13 statements, it is your recollection that controls. For the  
14 same reason, you are not to consider a lawyer's questions as  
15 evidence. It is the witness's answers that are evidence, not  
16 the questions.

17 Finally on this point, as I have mentioned, any  
18 statements that I may have made do not constitute evidence. It  
19 is for you alone to decide the weight, if any, to be given to  
20 the testimony you have heard and the exhibits you have seen.

21 Generally there are two types of evidence that you may  
22 consider in reaching your verdict. One type of evidence is  
23 direct evidence. Direct evidence is testimony by a witness  
24 that something he or she knows by virtue of his or her own  
25 senses, something he or she has seen, felt, touched or heard.

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1           For example, if a witness testified that when he or  
2 she left the house this morning, it was raining, that would be  
3 direct evidence about the weather. Circumstantial evidence is  
4 evidence from which you may infer the existence of certain  
5 facts.

6           For example, assume when you arrived at the courthouse  
7 this morning, the sun was shining and it was a nice day.  
8 Assume that the courtroom blinds were drawn and you could not  
9 look outside. As you were sitting here, someone walked in with  
10 an umbrella which was dripping wet. Then a few minutes later  
11 another person entered with a wet raincoat.

12           Now, because you cannot see outside of the courtroom,  
13 you cannot tell whether or not it is raining, so you have no  
14 direct evidence of that fact, but on the combination of facts  
15 that I've asked you to assume, it would not be unreasonable for  
16 you to conclude that it had been raining. That is all there is  
17 to circumstantial evidence. You infer on the basis of reason  
18 and experience and common sense from one established fact the  
19 existence or nonexistence of some other fact.

20           As you can see, the matter of drawing inferences from  
21 facts in evidence is not a matter of guesswork or speculation.  
22 An inference is a logical, factual conclusion that you might  
23 reasonably draw from other facts that have been proven.

24           Any material fact such as what a person was thinking  
25 or intending can rarely be proved by direct evidence.

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1 Circumstantial evidence is as valuable as direct evidence. The  
2 law makes no distinction between direct and circumstantial  
3 evidence, but simply requires that before convicting a  
4 defendant, the jury must be satisfied of the defendants' guilt  
5 beyond a reasonable doubt based on all the evidence or lack of  
6 evidence in the case, circumstantial or direct.

7 There are times when different inferences may be drawn  
8 from the evidence. The government asks you to draw one set of  
9 inferences. The defendant asked you to draw another. It is  
10 for you and you alone to decide what inferences you will draw.

11 You have had the opportunity to observe the witnesses.  
12 It is now your job to decide how believable each witness was in  
13 his or her testimony. You are the sole judges of the  
14 credibility of each witness and of the importance of his or her  
15 testimony. You should carefully scrutinize all of the  
16 testimony of each witness, the circumstances under which each  
17 witness testified, the impression the witness made when  
18 testifying, the relationship of the witness to the controversy  
19 and the parties, the witness's bias or impartiality, the  
20 reasonableness of the witness's statement, the strength or  
21 weakness of the witness's recollection viewed in the light of  
22 all other testimony, and any other matter in evidence that may  
23 help you decide the truth and the importance of each witness's  
24 testimony.

25 In other words, what you must try to do in deciding

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1 credibility is to size a witness up in light of his or her  
2 demeanor, the explanation given and all the other evidence in  
3 the case. How did the witness appear? Was the witness candid,  
4 frank and forthright, or did the witness seem to be evasive or  
5 suspect in some way?

6 How did the way the witness testified on direct  
7 examination compare with how the witness testified on  
8 cross-examination?

9 Was the witness consistent or contradictory?

10 Did the witness appear to know what he or she was  
11 talking about?

12 Did the witness strike you as someone who was trying  
13 to report his or her knowledge accurately?

14 These are examples of the kinds of common-sense  
15 questions you should ask yourself in deciding whether a witness  
16 was or was not truthful. In passing upon the credibility of a  
17 witness, you may also take into account any inconsistencies or  
18 contradictions as to material matters in his or her testimony.  
19 If you find that any witness has willfully testified falsely as  
20 to any material fact, you have the right to reject the  
21 testimony of that witness in its entirety.

22 On the other hand, even if you find that a witness has  
23 testified falsely as to any material fact, you have the right  
24 to reject as false that portion of his or her testimony and  
25 accept as true any other portion of the testimony. A witness

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1 may be inaccurate, contradictory or even untruthful in some  
2 aspects, and yet be truthful and entirely credible in other  
3 aspects of his or her testimony.

4 The ultimate question for you to decide in passing  
5 upon the credibility is did the witness tell the truth before  
6 you? It is for you to say whether his or her testimony at this  
7 trial is truthful in whole or in part.

8 In evaluating the credibility of witnesses, you should  
9 take into account any evidence that the witness who testified  
10 may benefit in some way from the outcome in this case. Such an  
11 interest in the outcome creates a motive to testify falsely and  
12 may sway the witness to testify in a way that advances his or  
13 her own interests. Therefore, if you find that any witness  
14 whose testimony you are considering may have an interest in the  
15 outcome of the trial, then you should bear that factor in mind  
16 when evaluating the credibility of his or her testimony and  
17 accept it with great care.

18 This is not to suggest that every witness who has an  
19 interest in the outcome of the case will testify falsely. It  
20 is for you to decide to what extent, if at all, the witness's  
21 interest has affected or colored his or her testimony.

22 You have heard testimony from a law enforcement  
23 official and employees of the government. The fact that a  
24 witness may be employed by the federal government as a law  
25 enforcement official or employee does not mean that his or her

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1 testimony is necessarily deserving of more or less  
2 consideration or greater or lesser weight than that of an  
3 ordinary witness. In this context, defense counsel may attack  
4 the credibility of such a witness on the ground that his or her  
5 testimony may be colored by a personal or professional interest  
6 in the outcome of the case. It is your decision, after  
7 reviewing all of the evidence, whether to accept the testimony  
8 of the law enforcement or government employee witness and to  
9 give to that testimony the weight you find it deserves.

10 You have also heard from a witness who testified that  
11 he was involved in criminal conduct and who subsequently pled  
12 guilty to his criminal conduct pursuant to what is called a  
13 cooperation agreement with the government. This witness has  
14 agreed to testify and to cooperate with the government in hope  
15 of receiving a reduced sentence. You are instructed that you  
16 must not draw any conclusions or inferences of any kind,  
17 favorable or unfavorable, about a defendant's guilt from the  
18 fact that a prosecution witness pled guilty to similar charges.

19 The decision of the witness to plead guilty was a  
20 personal decision about his own guilt. Experience will tell  
21 you that the government frequently must rely on the testimony  
22 of cooperating witnesses and other witnesses who have admitted  
23 to participating in crimes. The government must take its  
24 witnesses as it finds them and frequently must use such  
25 testimony in criminal prosecutions because otherwise it would

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1 be difficult or impossible to detect and prosecute wrongdoers.

2 For these very reasons, the law allows the use of  
3 cooperating witness testimony. Because of the possible  
4 interest a cooperating witness may have, the cooperating  
5 witness's testimony should be scrutinized with care and  
6 caution. The fact that a witness is a cooperating witness can  
7 be considered by you as bearing upon his credibility. It does  
8 not follow, however, that simply because a person has admitted  
9 to participating in one or more crimes, he is incapable of  
10 giving truthful testimony.

11 Like the testimony of any other witness, cooperating  
12 witness testimony should be given the weight it deserves in  
13 light of the facts and circumstances before you, taking into  
14 account the witness's demeanor, candor, the strength and  
15 accuracy of the witness's recollection, his background and the  
16 extent to which his testimony is or is not corroborated by  
17 other evidence in the case.

18 In evaluating the testimony of a cooperating witness,  
19 you should ask yourselves whether this cooperating witness  
20 would benefit more by lying or by telling the truth. Was his  
21 testimony made up in any way because he believed or hoped he  
22 would somehow receive favorable treatment by testifying  
23 falsely, or did he believe his interests would be best served  
24 by testifying truthfully?

25 If you believe the witness was motivated by hopes of

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1 personal gain, was the motivation one that would cause him to  
2 lie or was it one that would cause him to tell the truth? Did  
3 this motivation color his testimony?

4 If you find the testimony was false, you should reject  
5 it. If, however, after a cautious and careful examination of  
6 the cooperating witness's testimony and demeanor upon the  
7 witness stand, you're satisfied the witness told the truth, you  
8 should accept it as credible and act upon it accordingly.

9 As with any witness, let me emphasize that the issue  
10 of credibility need not be decided in an all-or-nothing  
11 fashion. Even if you find that a witness testified falsely in  
12 one part, you still may accept his testimony in other parts or  
13 may disregard all of it. That is a determination entirely for  
14 you, the jury.

15 You have heard the testimony of witnesses who have  
16 testified under a grant of immunity from the Court. What this  
17 means is that the testimony of the witness may not be used  
18 against him in any criminal case except a prosecution for  
19 perjury, giving a false statement or otherwise failing to  
20 comply with the immunity order of the Court.

21 You are instructed that the government is entitled to  
22 call as a witness a person who has been granted immunity by  
23 order of the Court. The testimony of a witness who has been  
24 granted immunity should be examined closely to determine  
25 whether it is colored in a way as to further the witness's own



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1 interests. If you believe the witness's testimony to be true  
2 and determine to accept the testimony, you may give it such  
3 weight, if any, as you believe it deserves.

4 You have heard evidence that a witness may have made a  
5 statement on an earlier occasion which counsel argues is  
6 inconsistent with the witness's trial testimony. Evidence of a  
7 prior inconsistent statement is not to be considered by you as  
8 affirmative evidence bearing on the defendants' guilt.  
9 Evidence of the prior inconsistent statement was placed before  
10 you for the more limited purpose of helping you decide whether  
11 to believe the trial testimony of the witness who allegedly  
12 contradicted himself or herself. If you find that the witness  
13 made an earlier statement that conflicts with his or her trial  
14 testimony, you may consider that fact in deciding how much of  
15 his or her trial testimony, if any, to believe.

16 In making this determination, you may consider whether  
17 the witness purposefully made a false statement or whether it  
18 was an innocent mistake, whether the inconsistency concerns an  
19 important fact or whether it had to do with a small detail,  
20 whether there is a motive to fabricate, whether the witness had  
21 an explanation for the inconsistency and whether that  
22 explanation appealed to your common sense. It is exclusively  
23 your duty, based upon all the evidence and your own good  
24 judgment, to determine whether the prior statement was  
25 inconsistent and, if so, how much, if any, weight to be given

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1 to the inconsistent statement in determining whether to believe  
2 all or part of the witness's testimony.

3           You have heard testimony from what we call expert  
4 witnesses. An expert is someone who, by education or  
5 experience, has acquired learning or experience in a science or  
6 a specialized area of knowledge. Such a witness is permitted  
7 to give his opinions as to relevant matters in which he  
8 professes to be an expert and give his reasons for such  
9 opinions. Expert testimony is presented to you on the theory  
10 that someone who is experienced in the field can assist you in  
11 understanding the evidence or in reaching an independent  
12 decision on the facts.

13           Your role in judging credibility applies to experts as  
14 well as to other witnesses. You should consider the expert  
15 opinions that were received in evidence in this case and give  
16 them as much or as little weight as you think they deserve. If  
17 you should decide that an opinion of an expert was not based on  
18 sufficient evidence or experience or on sufficient data, or if  
19 you should conclude the trustworthiness or credibility of an  
20 expert was questionable for any reason, or if an opinion of an  
21 expert was outweighed, in your judgment, by other evidence in  
22 the case, you might disregard that opinion of that expert  
23 entirely or in part.

24           On the other hand, if you find the expert opinion was  
25 based on sufficient data, education and experience, and the

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1 other evidence does not give you reason to doubt his  
2 conclusions, you would be justified in placing great reliance  
3 on his testimony.

4 Although the defendant is under no obligation to  
5 present any testimony, you have heard testimony that Devon  
6 Archer has a reputation for honesty and trustworthiness along  
7 with all the other evidence you have heard. You may take into  
8 consideration what you believe about a defendant's reputation  
9 for honesty and trustworthiness when you decide whether the  
10 government has proven beyond a reasonable doubt that that  
11 defendant committed the crime.

12 You have heard evidence during the trial some  
13 witnesses have discussed the facts of the case and/or their  
14 testimony with lawyers. You may consider that fact when you  
15 are evaluating a witness's credibility, but I should tell you  
16 there is nothing unusual or improper about witnesses meeting  
17 with lawyers before testifying so the witness can be aware of  
18 subjects he will be questioned about and focus on those  
19 subjects and have the opportunity to review relevant exhibits  
20 before being questioned about them. Such consultation helps  
21 conserve your time and the Court's time. In fact, it would be  
22 unusual for a lawyer to call a witness without such  
23 consultation. The weight you give to the fact or the nature of  
24 the witness's preparation for his testimony and what inferences  
25 you draw from such preparation are matters completely within

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1 your discretion.

2           There are people whose names you heard during the  
3 course of this trial but who did not appear here to testify. I  
4 instruct you that all parties have an equal opportunity or lack  
5 of opportunity to call any of these witnesses. Therefore, you  
6 should not draw any inferences or reach any conclusions as to  
7 what they would have testified to had they been called. Their  
8 absence should not affect your judgment in any way.

9           You should remember my instruction, however, that the  
10 law does not impose on a defendant in a criminal case the  
11 burden or duty of calling any witnesses or producing any  
12 evidence. You may not draw any inference, favorable or  
13 unfavorable, towards the government or any of the defendants  
14 from the fact that any person in addition to the defendants is  
15 not on trial here. You also may not speculate in any way as to  
16 the reason or reasons why other persons are not on trial.  
17 Those matters are wholly outside your concern and have no  
18 bearing open your function as jurors.

19           You have also heard about certain individuals who are  
20 not on trial here but who have pled guilty to related offenses.  
21 As I instructed you with respect to the testimony of the  
22 cooperating witness in this case, you may not draw any  
23 conclusions or inferences of any kind, favorable or  
24 unfavorable, about a defendant's guilt from the fact that  
25 another person has pled guilty to similar charges.

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1           You have heard references to certain investigative  
2 techniques that were used or not used by the law enforcement  
3 authorities in this case. You may consider these facts in  
4 deciding whether the government has met its burden of proof  
5 because, as I told you, you should look to all of the evidence  
6 or lack of evidence in deciding whether any of the defendants  
7 are guilty. There is no legal requirement that the government  
8 prove its case through any particular means. While you are to  
9 consider carefully the evidence presented by the government,  
10 you need not speculate as to why certain techniques were used  
11 or why others were not used. Law enforcement techniques are  
12 not your concern.

13           There have been a number summary charts and exhibits  
14 that were shown to you but not admitted into evidence. At the  
15 time that they were shown to you, I had noted this fact to you.  
16 For these charts and exhibits were not admitted into evidence,  
17 they serve merely as summaries and analyses of testimony and  
18 documents in the case and are here to act as visual aids for  
19 you. It is the underlying evidence and the weight which you  
20 attribute to that which gives value and significance to these  
21 charts.

22           To the extent that the charts conform to what you  
23 determine the underlying facts to be, you should accept them.  
24 To the extent the charts differ from what you determine the  
25 underlying evidence to be, you may reject them.

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1           Some of the exhibits that were admitted into evidence  
2           were in the form of charts and summaries. For these charts and  
3           summaries that were admitted into evidence, you should consider  
4           them as you would any other evidence.

5           In this case, you have also heard evidence in the form  
6           of stipulations of fact. A stipulation of fact is an agreement  
7           among the parties that a certain fact is true. You must regard  
8           such agreed facts as true. It is for you, however, to  
9           determine the weight to be given to any stipulated fact.

10          During the course of the trial we have seen among the  
11          exhibits received in evidence some documents that are redacted.  
12          "Redacted" means that a portion of the document was taken out.  
13          You are to concern yourself only with the part of the item that  
14          has been admitted into evidence. You should not speculate any  
15          reason why the other part of it has been deleted.

16          Mr. Galanis, Mr. Archer and Mr. Cooney did not testify  
17          in this case. Under our Constitution, a defendant in a  
18          criminal case never has any duty to testify or come forward  
19          with any evidence. This is because the burden of proof beyond  
20          a reasonable doubt remains on the government at all times and  
21          the defendant is presumed innocent. A defendant is never  
22          required to prove that he is innocent. You may not speculate  
23          as to why any defendant did not testify, nor attach any  
24          significance to the fact the defendant did not testify.  
25          Indeed, you may not draw any inference whatsoever from any

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1 defendant's decision not to take the witness stand.

2 I will turn now to my instructions to you related to  
3 the charges brought against the defendants in this case. The  
4 defendants in this case, John Galanis, Devon Archer and Bevan  
5 Cooney, are formally charged in what is called an indictment.  
6 As I instructed you at the outset of this case, the indictment  
7 is merely a charge or accusation. It is not evidence and it  
8 cannot be used by you as proof of anything.

9 As a result, you are to give it no weight in deciding  
10 the defendants' guilt or lack of guilt. What matters is the  
11 evidence that you heard at this trial. Indeed, as I have  
12 previously noted, each defendant is presumed innocent, and it  
13 is the government's burden to prove each of the defendants'  
14 guilt beyond a reasonable doubt.

15 Before you begin your deliberations, you will be  
16 provided -- I am not going to provide you with a copy of the  
17 indictment. Instead, what I am going to do is I am going to  
18 summarize the offenses charged in the indictment and then  
19 explain in detail the elements of the charged offenses.

20 To find the defendants guilty, you must find that the  
21 government has proven the specific charges in the indictment,  
22 not some other crime, beyond a reasonable doubt. If you do not  
23 find the government has established beyond a reasonable doubt  
24 the specific allegations set forth in the indictment, then you  
25 must find the defendants not guilty. All three defendants are

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1 charged in both counts of the indictment.

2 Count 1 of the indictment charges that from at least  
3 on or about March 2014 through in or about April 2016, each of  
4 the defendants conspired or agreed with others to commit  
5 securities fraud. As I will explain in more detail in a few  
6 moments, a conspiracy such as the one charged in Count 1 is a  
7 criminal agreement to violate the law.

8 Count 2 of the indictment charges that from at least  
9 in or about March 2014 through in or about April 2016, each of  
10 the defendants committed the substantive offense of securities  
11 fraud. Later on I will explain to you the differences between  
12 a conspiracy count and a substantive count. For now just keep  
13 in mind that a conspiracy count is different from a substantive  
14 count.

15 Count 1 charges each of the defendants with  
16 participating in a conspiracy to commit securities fraud.

17 Count 2 charges each of the defendants with a  
18 substantive securities fraud.

19 The indictment alleges that the securities fraud  
20 conspiracy charged in Count 1 and the substantive securities  
21 fraud offense charged in Count 2 relate to an alleged scheme by  
22 each of the defendants to defraud a Native American tribal  
23 entity, the Wakpamni Lake Community Corporation, which I will  
24 call the WLCC, to issue bonds, which I will call the Wakpamni  
25 bonds, based upon false and misleading representations and to



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1 fraudulently cause clients of Atlantic and Hughes to buy  
2 certain of those bonds, thereby defrauding those clients as  
3 well.

4 The indictment also alleges that the defendants failed  
5 to invest the bond proceeds on the WLCC's behalf in the manner  
6 agreed upon and instead misappropriated the bond proceeds for  
7 their own use. The defendants deny all of the allegations.

8 In your role as jurors, you are not to be concerned  
9 with the wisdom or policy of any laws the defendants are  
10 alleged to have broken. Your verdict must be based on the  
11 evidence in this case. Your verdict must not be based upon  
12 your personal approval or disapproval of any particular law.

13 The indictment names three defendants who are on trial  
14 together. In reaching a verdict, you must bear in mind that  
15 guilt is individual. Your verdict as to each defendant must be  
16 determined separately with respect to him, solely on the  
17 evidence or lack of evidence presented against him, without  
18 with regard to the guilt or innocence of anyone else.

19 As I just indicated, the indictment contains two  
20 counts. Each count charges a different crime. You must  
21 consider each count of the indictment separately and you must  
22 return a separate verdict as to each defendant on each count.  
23 The case on each count stands or falls upon the proof or lack  
24 of proof for that count.

25 I am now going to discuss the counts in the indictment

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1 because some of the instructions as to the substance of the  
2 charge in Count 2 will assist you in assessing the conspiracy  
3 charge contained in Count 1.

4 I'll first instruct you on Count 2. Count 2 charges  
5 each of the defendants, John Galanis, Devon Archer and Bevan  
6 Cooney, with committing the substantive crime of securities  
7 fraud. Specifically Count 2 alleges as follows:

8 From at least in or about March 2014 through in or  
9 about April 2016, in the Southern District of New York and  
10 elsewhere, John Galanis, a/k/a Yanni, Bevan Cooney and Devon  
11 Archer, the defendants, willfully and knowingly, directly and  
12 indirectly, by use of the means and instrumentalities of  
13 interstate commerce and of the mails, and of the facilities of  
14 national securities exchanges, used and employed manipulative  
15 and deceptive devices and contrivances in connection with the  
16 purchase and sales of securities, in violation of Title 17,  
17 Code of Federal Regulations, Section 240, 10b-5, by:

18 A. Employing devices schemes and artifices to  
19 defraud;

20 B. Making untrue statements of material fact and  
21 omitting to state material facts necessary in order to make the  
22 statements made in the light of the circumstances under which  
23 they were made not misleading; and

24 C. Engaging in acts, practices and course of business  
25 which operated and would operate as a fraud and deceit upon

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1 persons, to wit:

2 The defendants engaged in a scheme to misappropriate  
3 the proceeds of several bond issuances by the WLCC and also  
4 caused investor funds to be used to purchase the bonds for  
5 which there was no secondary market, through which such bonds  
6 could be redeemed without disclosure to those investors of  
7 material facts, including the existence of multiple conflicts  
8 of interest, and which investments in some cases were outside  
9 the investment parameters of the accounts in which they were  
10 placed.

11 The relevant law here is Section 10-b of the  
12 Securities Exchange Act of 1934, which is set forth in 15  
13 United States Code Section 78jb. Section 10-b provides in  
14 pertinent part, it shall be unlawful for any person, directly  
15 or indirectly, by the use of any means or instrumentality of  
16 interstate commerce or of the mails, or of any facility, of any  
17 national securities exchange, to use or employ in connection  
18 with the purchase or sale of any security registered on a  
19 national securities exchange, or any security not so  
20 registered, any manipulative or deceptive device or  
21 contrivance, in contravention of such rules and regulations as  
22 the SEC may prescribe as necessary or appropriate in the public  
23 interest or for the protection of the investors.

24 The law also defines the term "security," which is set  
25 forth in 15 United States Code Section 78 ca-10, includes any

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1 bond.

2 Based on its authority under the statute, the SEC has  
3 created a number of rules and regulations, one of which is  
4 known as Rule 10b-5, is relevant here. Rule 10b-5 reads as  
5 follows:

6 Employment of manipulative and deceptive devices. It  
7 shall be unlawful for any person, directly or indirectly, by  
8 the use of any means or instrumentalities of interstate  
9 commerce or of the mails, or of any facility of any national  
10 securities exchange:

11 A. To employ any device, scheme or artifice to  
12 defraud;

13 B. To make any untrue statement of a material fact,  
14 or to admit omit to state a material fact necessary in order to  
15 make the statements made in light of the circumstances under  
16 which they were made not misleading; or

17 C. To engage in any act, practice or course of  
18 business which operates or would operate as a fraud or deceit  
19 upon any person in connection with the purchase or sale of any  
20 security.

21 The 1934 Securities Exchange Act was the second of two  
22 laws passed by Congress to protect the investing public in the  
23 purchase and sale of securities that are publicly distributed.  
24 To establish a violation of Section 10-b of the 1934 Securities  
25 Exchange Act as charged in Count 2 of the indictment, the

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1 government must prove each of the following elements beyond a  
2 reasonable doubt:

3 First, in connection with the purchase or sale of  
4 securities such as bonds, the defendant you are considering did  
5 any one or more of the following:

6 One. Employed a device, scheme or artifice to  
7 defraud; or

8 Two. Made an untrue statement of a material fact or  
9 omitted to state a material fact which made what was said under  
10 the circumstances misleading; or

11 Three. Engage in act, practice or course of business  
12 that operated or would operate as a fraud or deceit upon a  
13 purchase or seller;

14 Second, that the defendant you are considering acted  
15 knowingly, willfully and with the intent to defraud;

16 Third, that the defendant you are considering  
17 knowingly used, or caused to be used, any means or  
18 instrumentalities of transportation or communication in  
19 interstate commerce or the use of the mails in furtherance of  
20 the fraudulent conduct.

21 I will discuss each element with you in turn. Does  
22 anyone want to stand up and stretch?

23 (Pause)

24 The first element the government must prove beyond a  
25 reasonable doubt is that in connection with the purchase or

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1 sale of securities, the defendant you are considering did any  
2 one of the following -- did I read this? I don't think so.

3 1. Employed a device, scheme or artifice to defraud;  
4 or

5 2. Made an untrue statement of a material fact or  
6 omitted to state a material fact, which made what was said  
7 under the circumstances misleading; or

8 3. Engaged in an act, practice or course of business  
9 that operated or would operate as a fraud or deceit upon a  
10 purchaser or seller.

11 To prove this element, the government must prove at  
12 least one of those three types of unlawful conduct was  
13 committed by the defendant you are considering in connection  
14 with the purchase or sale of securities, although it does not  
15 need to prove all three of them. You must be unanimous as to  
16 which type of unlawful conduct, if any, the defendant you are  
17 considering committed. Let me now explain some of those terms.

18 A device, scheme or artifice is merely a plan for the  
19 accomplishment of an objective. Fraud is a general term that  
20 embraces all of the various means that individuals devise to  
21 take advantage of others. It includes all kinds of  
22 manipulative and deceptive acts. The fraud or deceit need not  
23 relate to the investment value of the securities involved in  
24 this case.

25 Additionally, it is also not necessary that the

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1 defendant you are considering made a profit or that anyone  
2 actually suffered a loss for you to find that the government  
3 has proven this element beyond a reasonable doubt.

4 An affirmative misrepresentation is one type of false  
5 statement. It is a statement of a fact which is objectively  
6 false. To put it in everyday language, an affirmative  
7 misrepresentation is a lie. A statement, representation, claim  
8 or document is false if it is untrue when made and was then  
9 known to be untrue by the person making it or causing it to be  
10 made. A representation or statement is fraudulent if it was  
11 falsely made with the intention to deceive.

12 A statement may also be false if it contains  
13 half-truths or it conceals material facts in a manner that  
14 makes what is said or represented deliberately misleading. The  
15 deception need not be premised upon spoken or written words  
16 alone. The arrangement of the words or the circumstances in  
17 which they are used may convey the false and deceptive  
18 appearance.

19 If there is deception, the manner in which it is  
20 accomplished does not matter. You cannot find that the  
21 government has proven the first element unless you find that  
22 the defendant you are considering participated or agreed to  
23 participate in fraudulent conduct that was in connection with a  
24 purchase or sale of securities. I instruct you that the  
25 Wakpamni bonds are a security within the meaning of federal

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1 law.

2 The requirement that the fraudulent conduct be in  
3 connection with the purchase or sale of securities is satisfied  
4 so long as there was some nexus or relation between the  
5 allegedly fraudulent conduct and the sale or purchase of  
6 securities. Fraudulent conduct may be in connection with the  
7 purchase or sale of securities if you find that the alleged  
8 fraudulent conduct touched upon a securities transaction.

9 It is not necessary for you to find that if the  
10 defendant you are considering was or would be the actual seller  
11 of the securities, it is sufficient that the defendant  
12 participated in the scheme or fraudulent conduct that involved  
13 the purchase or sale of securities.

14 By the same token, the government need not prove that  
15 the defendant you are considering personally made the  
16 misrepresentation or that he omitted the material fact. It is  
17 sufficient if the government establishes that the defendant  
18 caused the statement to be made or the fact to be omitted.

19 With regard to the alleged misrepresentations or  
20 omissions, you must determine whether the statements were true  
21 or false when made, and in the case of alleged omissions,  
22 whether the omissions were misleading. If you find that the  
23 government established beyond a reasonable doubt that a  
24 statement was false, or a statement was omitted, rendering the  
25 statements that were made misleading, you must next determine



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1 whether the statement or omission was material under the  
2 circumstances.

3 The word "material" here refers to the nature of the  
4 false or misleading statements. We use the word "material" to  
5 distinguish between the kinds of statements we care about and  
6 those that are of no real importance.

7 A material fact is one that a reasonable investor  
8 would consider important in making his or her investment  
9 decision regarding the sale or purchase of securities. That  
10 means that if you find a particular statement of fact or  
11 omission to have been untruthful or misleading, you must  
12 consider whether the government has proven that the statement  
13 is material. In other words, you must consider whether the  
14 government has proven that the statement or omission was one  
15 that would have mattered to a reasonable investor in making  
16 such investment decision.

17 In considering whether a statement or omission was  
18 material, I remind you that the standard is what a reasonable  
19 investor would have wanted to know in making an investment  
20 decision. It does not matter whether the actual investor who  
21 purchased or issued the bonds at issue here is sophisticated or  
22 inexperienced because the standard is whether an investor who  
23 is reasonable would have wanted to know the statement or  
24 omission, nor does it matter whether the alleged unlawful  
25 conduct was or would have been successful or whether the

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1 defendant you are considering profited or would have profited  
2 as a result of the alleged crime. Success is not an element or  
3 violation of Section 78jb or Rule 10b-5.

4 If, however, you find that the defendant you are  
5 considering expected to or did profit from the alleged scheme,  
6 you may consider that in relation to the element of intent  
7 which I will discuss in a moment.

8 The second element of Count 2 that the government must  
9 establish is that the defendant you are considering acted  
10 knowingly, willfully and with intent to defraud. "Knowingly"  
11 means to act voluntarily and deliberately rather than  
12 mistakenly or inadvertently. "Willfully" means to act  
13 knowingly and purposefully, with an intent to do something the  
14 law forbids; that is to say, with bad purpose, either to  
15 disobey or to disregard the law. "Intent to defraud" in the  
16 context of the securities laws means to act knowingly and with  
17 intent to deceive.

18 The question of whether a person acted knowingly,  
19 willfully and with intent to defraud is a question of fact for  
20 you to determine like any other fact question. This question  
21 involves one's state of mind. Direct proof of knowledge and  
22 fraudulent intent is often not available. It would be a rare  
23 case where it could be shown that a person wrote or stated that  
24 as of a given time in the past, he committed an act with  
25 fraudulent intent. Such direct proof is not required.

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1           The ultimate facts of knowledge and criminal intent,  
2           though subjective, may be established by circumstantial  
3           evidence based upon a person's outward manifestations, his  
4           words, his conduct, his acts, and all the surrounding  
5           circumstances disclosed by the evidence and the rational or  
6           logical inferences that may be drawn therefrom.

7           Circumstantial evidence, if believed, is of no less  
8           value than direct direct evidence. In either case, the  
9           essential elements of the crime charged must be established  
10          beyond a reasonable doubt. The government need only prove that  
11          the defendant you are considering acted with an intent to  
12          deceive, manipulate or defraud. The government need not show  
13          that the defendant acted with an intent to cause harm.

14          What is referred to as drawing inferences from  
15          circumstantial evidence is no different from what people  
16          normally mean when they say use your common sense. Using your  
17          common sense means that when you come to decide whether a  
18          defendant possessed or lacked an intent to defraud, you do not  
19          limit yourself to what the defendant said, but you also look at  
20          what he did and what others did in relation to the defendant  
21          and in general everything that occurred. .

22          On this subject, however, it is important for you to  
23          know you may not infer knowledge or intent based solely on a  
24          defendant's relationship or association with certain  
25          individuals or his position in the corporate entity.

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1           At this point, let me also advise you it since an  
2           intention element of the crime charged is intent to defraud, it  
3           follows as good faith, as I will define that term, on the part  
4           of a defendant is a complete defense to a charge of securities  
5           fraud. A person who acts on a belief or opinion honestly held  
6           is not punishable under the securities fraud statutes merely  
7           because his opinion or belief turns out to be wrong.  
8           Therefore, if you find that at all relevant times a defendant  
9           acted in good faith, it is your duty to acquit him.

10           I want to caution you in this regard that the  
11           defendant has no burden to establish a defense of good faith.  
12           The burden is on the government to prove fraudulent intent  
13           beyond a reasonable doubt.

14           In considering whether or not a defendant acted in  
15           good faith, however, you are instructed that a belief by a  
16           defendant, if such belief existed, that ultimately everything  
17           will work out so that no investors would lose any money, or  
18           that particular investments would ultimately be financially  
19           advantageous for clients, does not necessarily constitute good  
20           faith. No amount of honest belief on the part of the defendant  
21           that the scheme will ultimately make a profit for the investors  
22           will excuse fraudulent actions or false representations or  
23           omissions by him.

24           As a practical matter, then, to prove this charge  
25           against a defendant, the government must establish beyond a

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1 reasonable doubt the defendant knew that his conduct was  
2 calculated to deceive and that he nevertheless associated  
3 himself with the alleged fraudulent scheme.

4 The third and final element of Count 2, the  
5 substantive securities fraud count, the government must prove  
6 beyond a reasonable doubt that the defendant you are considered  
7 knowingly used, or caused to be used, the mails or the  
8 instrumentalities of interstate commerce in furtherance of the  
9 scheme to defraud.

10 Let me first note that it is unnecessary for the  
11 government to prove both the mails or an instrumentality of  
12 interstate commerce was used in furtherance of the fraudulent  
13 scheme. Only one of the above, either the mails or an  
14 instrumentality of interstate commerce, is enough, but you must  
15 be unanimous as to at least one.

16 In considering this element, it is not necessary for  
17 you to find that the defendant you are considering was or would  
18 have been directly or personally involved in any mailing or the  
19 use of an instrumentality of interstate commerce if the conduct  
20 alleged would naturally and probably result in the use of the  
21 mails or an instrumentality of interstate commerce, this  
22 element would be satisfied.

23 Nor is it necessary that the items sent through the  
24 mails or communicated through an instrumentality of interstate  
25 commerce did or would contain the fraudulent material or

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1 anything criminal or objectionable. The matter mailed or  
2 communicated may be entirely innocent so long as it is in  
3 furtherance of the scheme to defraud or fraudulent conduct.

4 The use of mails or instrumentality in interstate  
5 commerce need not be central to the execution of the scheme and  
6 may even be incidental to it. All that is required is that the  
7 use of the mails or an instrumentality of interstate commerce  
8 bear in some relation to the object of the scheme or fraudulent  
9 conduct.

10 In fact, the actual purchase or sale of the security  
11 need not be accompanied by the use of the mails or an  
12 instrumentality of interstate commerce so long as the mails or  
13 instrumentality of interstate commerce are used in furtherance  
14 of the scheme and the defendant you are considering was still  
15 engaged in actions that are part of a fraudulent scheme when  
16 the mails or instrumentalities of interstate commerce were  
17 used.

18 The use of the term "mails" is self-explanatory and  
19 includes the United States Mail and Federal Express and other  
20 commercial mail couriers. The term "instrumentality of  
21 interstate commerce" includes any communications network that  
22 involves one or more, more than one state, such as those used  
23 to send emails and make phone calls. The wire transferred of  
24 money is also sufficient.

25 The substantive securities fraud charge in Count 2

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1 also charges the defendants with violating 18 United States  
2 Code Section 2, the aiding and abetting statute. That is each  
3 of the defendants is charged not only as a principal who  
4 committed the crime, but also as an aider and abettor in having  
5 willfully caused the crime.

6 As a result, under 18 United States Code Section 2,  
7 there are two additional ways the government may establish the  
8 defendants' guilt on the substantive count charged in the  
9 indictment. One way is called aiding and abetting. The other  
10 is called willfully causing a crime, and let me explain each of  
11 these.

12 Aiding and abetting is set forth in Section 2 (a) the  
13 statute. That section reads in part as follows:

14 Whoever commits an offense against the United States,  
15 or aids or abets or counsels, commands or induces, procures its  
16 commission or procures its commission, is punishable as a  
17 principal.

18 Under the aiding and abetting statute, it is not  
19 necessary for the government to show that the defendant himself  
20 physically committed the crime with which he is charged in  
21 order for you to find the defendant guilty. Thus, even if you  
22 do not find beyond a reasonable doubt the defendant himself  
23 committed the crime charged, you may under certain  
24 circumstances still find that defendant guilty of that crime as  
25 an aider or abettor.

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1           A person who aids or abets another to commit an  
2 offense is just as guilty of that offense as if he committed it  
3 himself. Accordingly, you may find the defendant guilty of a  
4 substantive crime if you find beyond a reasonable doubt that  
5 the government has proved that another person actually  
6 committed the crime and that the defendant aided and abetted  
7 that person in the commission of the offense.

8           As you can see, the first requirement is that another  
9 person has committed the crime charged. Obviously, no one can  
10 be convicted of aiding and abetting the criminal acts of  
11 another if no crime was committed by the other person in the  
12 first place. If you do find that a crime was committed, then  
13 you must consider whether the defendant willfully aided or  
14 abetted the commission of the crime.

15           In order to aid or abet another to commit a crime, it  
16 is necessary that you determine that he willfully, knowingly  
17 associated himself in some way with the crime and that he  
18 willfully and knowingly would seek by some act to help make the  
19 crime succeed. Participation in a crime is willful if action  
20 is taken voluntarily or intentionally, or in the case of a  
21 failure to act, with a specific intent to fail to do something  
22 the law requires to be done; that is to say, with a bad  
23 purpose, either to disobey or to disregard the law.

24           The mere presence of a defendant where a crime is  
25 being committed even coupled with knowledge by the defendant



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1 that a crime is being committed, or merely associating with  
2 others who were committing a crime, is not sufficient to  
3 establish aiding and abetting. One who has no knowledge that a  
4 crime is being committed or is about to be committed, but  
5 inadvertently does something that aids in the commission of the  
6 crime is not an aider or abettor. An aider or abettor must  
7 know that the crime is committed and act in a way which is  
8 intended to bring about the success of the criminal venture.

9 In other words, the defendant must willfully  
10 facilitate the crime. It is not enough if a defendant's  
11 actions may have been the effect of facilitating the crime.  
12 There must be proof beyond a reasonable doubt that he  
13 specifically intended to facilitate the crime in order for you  
14 to find that the government has met this element.

15 Facilitation does not require extensive participation,  
16 but the defendants' participation must occur before the  
17 completion of the crime. To determine whether the defendant  
18 aided or abetted the commission of the crime with which he is  
19 charged, ask yourself these questions:

20 First, did he participate in the crime charged as  
21 something he wished to bring about;

22 Second, did he associate himself with the criminal  
23 venture knowingly and willfully;

24 Finally, did he seek by his actions to make the  
25 criminal venture succeed.

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1           If the answer to all three of these questions is yes,  
2 then the defendant is and aider and abettor. If, on the other  
3 hand, your answer to any of these questions is no, then the  
4 defendant is not an aider or abettor.

5           The second way in which the government can establish  
6 the defendants' guilt under 18 United States Code Section 2 is  
7 by proving beyond a reasonable doubt that the defendant  
8 willfully caused a crime. Section 2 (b) of the aiding and  
9 abetting statute which relates to willfully causing a crime  
10 reads as follows:

11           Whoever willfully causes an act to be done which, if  
12 directly performed by him or another would be an offense  
13 against the United States, shall be guilty of a federal crime.

14           What does the term "willfully caused" mean? It means  
15 that the defendant himself need not have physically committed  
16 the crime or supervised or participated in the actual criminal  
17 conduct charged in the indictment. It does not mean that the  
18 defendant himself need have physically committed the crime or  
19 supervised or participated in the actual criminal conduct  
20 charged in the indictment. The meaning of the term "willfully  
21 caused" can be found in the answers to the following questions:

22           First, did the defendant you are considering take some  
23 action without which the crime would not have occurred?

24           Second, did the defendant intend that the crime would  
25 be actually committed by others?

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1           If you're persuaded beyond a reasonable doubt that the  
2 answer to both these questions is yes, then the defendant is  
3 guilty of the crime charged just as if the defendant himself  
4 had personally committed it.

5           If the answer to either is no, the defendant you are  
6 considering cannot be found guilty of Count 2 under this theory  
7 of liability.

8           (Continued on next page)

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1           Now I will instruct you as to Count One of the  
2 indictment, in which each of the defendants -- John Galanis,  
3 Devon Archer an Bevan Cooney -- is charged with violating Title  
4 18 United States Code, Section 371. That section provides as  
5 follows:

6           If two or more persons conspire either to commit any  
7 offense against the United States, or to defraud the United  
8 States, or any agency thereof, in any manner for any purpose  
9 and one or more of such persons do any act to effect the object  
10 of the conspiracy, each [is guilty of a federal crime].

11           Each of the defendants is charged in Count One with  
12 participating in a conspiracy to violate the federal statutes  
13 that make it unlawful to commit securities fraud.  
14 Specifically, Count One charges that each of the defendants  
15 agreed to commit securities fraud in connection with the  
16 Wakpamni bonds.

17           The indictment lists the overt acts that are alleged  
18 to have been committed in furtherance of the conspiracy charged  
19 in Count one.

20           As I have said, Count one of the indictment charges  
21 each defendant with participating in a conspiracy. As I will  
22 explain, a conspiracy is kind of a criminal partnership -- an  
23 agreement of two or more people to join together to accomplish  
24 some unlawful purpose. The essence of the crime of conspiracy  
25 is an agreement or understanding to violate other law. If a

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1 conspiracy exists, even if it should fail in its purpose, it is  
2 still punishable as a crime.

3 The crime of conspiracy -- or agreement -- to violate  
4 a federal law, as charged in the indictment, is an independent  
5 offense. It is separate and distinct from the actual violation  
6 of any specific federal law, such as that charged in Count Two  
7 that I have just described for you, which the law refers to as  
8 "substantive crime."

9 You may find a defendant guilty of a crime of  
10 conspiracy -- in other words, agreeing to commit securities  
11 fraud, even if you find that the substantive crime which was  
12 the object of the conspiracy -- securities fraud -- was never  
13 actually committed. Congress has deemed it appropriate to make  
14 conspiracy, standing alone, a separate crime, even if the  
15 conspiracy is not successful and no substantive crime is  
16 actually committed.

17 However, you must find that the defendant you are  
18 considering not guilty of conspiracy unless the government  
19 proves all of the elements of a conspiracy beyond a reasonable  
20 doubt and you may consider whether the substantive crime that  
21 is the object of the charged conspiracy was actually committed  
22 in determining whether the government has met its burden.

23 To prove a defendant guilty of the conspiracy charged  
24 in Count One, the government must prove beyond a reasonable  
25 doubt each of the following three elements:

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1 First, the government must prove the existence of the  
2 conspiracy charged in Count One of the indictment; that is, the  
3 existence of an agreement or understanding to commit the  
4 unlawful object of the charged conspiracy, which in this case  
5 is securities fraud. The first element then is: Did the  
6 conspiracy alleged in the indictment exist? Was there such a  
7 conspiracy; and

8 Second, the government must prove that the defendant  
9 you are considering willfully and knowingly became a member of  
10 the conspiracy, with intent to further its illegal purposes --  
11 that is, with the intent to commit the object of the charged  
12 conspiracy; and

13 Third, the Government must prove that any one of the  
14 conspirators -- not necessarily a defendant, but any one of the  
15 parties involved in the conspiracy -- knowingly committed at  
16 least one overt act in furtherance of the conspiracy during the  
17 life of the conspiracy, in the Southern District of New York.

18 So let us now separately consider each of these  
19 elements.

20 The first element that the prosecution must prove  
21 beyond a reasonable doubt to establish the offense of  
22 conspiracy is that two or more persons entered the unlawful  
23 agreement charged in the indictment.

24 The essence of the crime of conspiracy is an unlawful  
25 agreement between two or more people to violate the law. The

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1 first element of the crime of conspiracy thus has two parts:

2 An agreement and an illegal object of the conspiracy. I am now  
3 going to define both parts of this element to you

4 To meet its burden of proof on this element, the  
5 government must prove that there was an agreement between two  
6 or more people. The government is not required to show,  
7 however, that two or more people sat down at a table and  
8 entered into a solemn fact, orally or in writing, stating that  
9 they have formed a conspiracy to violate the law and spelling  
10 out all of the details of the plans and the means by which the  
11 unlawful project was to be carried out, or that the part that  
12 each of the persons who is a party to the conspiracy was going  
13 to play. Common sense will tell you that when people in fact  
14 undertake to enter into a criminal conspiracy, much is left to  
15 unexpressed understanding. Conspirators do not usually reduce  
16 their agreements to writing. They do not typically broadcast  
17 their plans publicly. By its very nature, a conspiracy is  
18 almost always secret in its origin and execution. It is enough  
19 if two or more people, in some way or manner, impliedly or  
20 tacitly come to an understanding to violate the law. Express  
21 language or specific words are not required to indicate assent  
22 or agreement to form the conspiracy. You need only find that  
23 two or more people entered into the unlawful agreement alleged  
24 in the indictment in order to find that a conspiracy existed.  
25 It is not enough, however, that the alleged conspirators simply

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1 met, discussed matters of common interest, acted in similar  
2 ways or perhaps helped one another out.

3 In determining whether there has been an unlawful  
4 agreement as alleged in Count One, you may judge the proven  
5 acts and conduct of the alleged conspirators that were taken to  
6 carry out the apparent criminal purpose. The old adage,  
7 "actions speak louder than words," is applicable here.  
8 Disconnected acts, when taken in connect with one another, can  
9 show a conspiracy or an agreement to secure a particular result  
10 just as satisfactorily and conclusively as more direct proof.

11 When people enter into a conspiracy to accomplish an  
12 unlawful end, they become agents or partners of one another in  
13 carrying out the conspiracy. In determining the factual issues  
14 before you, you may take into account any acts done or  
15 statements made by any of the alleged coconspirators during the  
16 course of the conspiracy, even though such facts or statements  
17 may not have been made in the presence of the defendant or may  
18 have been made without his knowledge.

19 Of course, proof concerning the accomplishment of the  
20 object of a conspiracy may be the most persuasive evidence that  
21 the conspiracy itself existed, but it is not necessary, as I  
22 have said, that the conspiracy actually succeeded for you to  
23 conclude that it existed. In deciding whether the conspiracy  
24 charged in Count One existed, you may consider all of the  
25 evidence of the acts, conduct and statements of the alleged



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1 conspirators and the reasonable inferences to be drawn from  
2 that evidence.

3 It is sufficient to establish the existence of the  
4 conspiracy if, after considering all of the relevant evidence,  
5 you find beyond a reasonable doubt that the mind of at least  
6 two alleged conspirators met in an understanding way, and that  
7 they agreed, as I have explained, to work together to  
8 accomplish the object or objective of the conspiracy charged in  
9 Count One.

10 The second part of the first element relates to the  
11 object of the conspiracy. The object of a conspiracy is the  
12 illegal goal the coconspirators agreed upon or hope to achieve.  
13 As I have mentioned, the object of the conspiracy charged in  
14 Count One of the indictment is securities fraud. In order to  
15 prove that a defendant is guilty of the conspiracy offense  
16 charged in Count One, the government must establish beyond a  
17 reasonable doubt that that defendant agreed with others to  
18 commit securities fraud.

19 As I noted, the substantive offense alleged in Count  
20 Two of the indictment is charged as the object of the  
21 conspiracy. This is permissible. A crime may be punished for  
22 its own sake, and it may also be an object of a conspiracy.  
23 However, you must consider them separately. A defendant may be  
24 guilty of one and not the other, and you may consider whether  
25 the defendant committed the substantive count when determining

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1 whether the defendant committed the conspiracy. I ask that you  
2 apply the instructions I have already given regarding Count Two  
3 in assessing whether the government has proven the object of  
4 the conspiracy charged as Count One of the indictment.

5 If you conclude that the government has proven beyond  
6 a reasonable doubt that the conspiracy charged in Count One of  
7 the indictment existed, and that the conspiracy had securities  
8 fraud as its object, then you must next determine the second  
9 question: Whether the defendant you are considering  
10 participated in the conspiracy with knowledge of its unlawful  
11 purpose and in furtherance of its unlawful objective.

12 In order to satisfy the second element of Count One,  
13 the government must prove beyond a reasonable doubt that a  
14 defendant knowingly and willfully entered into the conspiracy  
15 with the intention of aiding the accomplishment of its unlawful  
16 ends.

17 An act is done "knowingly" and "willfully" if it is  
18 done deliberately and purposely; that is, a defendant's acts  
19 must have been the product of that defendant's conscious  
20 objective, rather than the product of a mistake or accident, or  
21 mere negligence, or some other innocent reason.

22 To satisfy its burden of proof that a defendant  
23 knowingly and willfully became a member of a conspiracy to  
24 accomplish an unlawful purpose, the government must prove  
25 beyond a reasonable doubt that the defendant knew that he was a

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1 member of an operation or conspiracy to accomplish that  
2 unlawful purpose, and that his action of joining such an  
3 operation or conspiracy was not due to carelessness,  
4 negligence, or mistake.

5 It is not necessary for the government to show that a  
6 defendant was fully informed as to all of the details of the  
7 conspiracy in order for you to infer knowledge and intent on  
8 his part. To have guilty knowledge, a defendant need not have  
9 known the full extent of the conspiracy, or all of the  
10 activities of all the conspiracy all of the conspiracy  
11 participants. Similarly, it is not necessary for a defendant  
12 to have known every other member of the conspiracy. In fact, a  
13 defendant may know and have conspired with only one other  
14 member of the conspiracy and may still be considered a  
15 coconspirator. Nor is it necessary for a defendant to have  
16 received any monetary benefit from his participation in the  
17 conspiracy, or to have a financial stake in the outcome of the  
18 alleged joint venture. It is enough if a defendant  
19 participated in the conspiracy unlawfully, knowingly, and  
20 willfully, as I have defined those terms.

21 The duration and extent of the defendant's  
22 participation has no bearing on the issue of that defendant's  
23 guilt. A defendant need not have joined the conspiracy at the  
24 outset. A defendant may have joined the conspiracy at any time  
25 in its progress, and a defendant will be held responsible for

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1 all that was done before he joined and all that was done during  
2 the conspiracy's existence while he was a member. Each member  
3 of a conspiracy may perform separate and distinct acts. Some  
4 conspirators may play major roles, while other play minor roles  
5 in the scheme, and an equal role is not what the law requires.  
6 In fact, even a single act may be sufficient to draw a  
7 defendant within the scope of the conspiracy.

8 It is important for you to note that a defendant's  
9 participation in the conspiracy must be established by  
10 independent evidence of his own acts and statements and the  
11 reasonable inferences that may be drawn from them. I want to  
12 caution you, however, that a person's mere association with or  
13 relationship to a member of the conspiracy does not make that  
14 person a member of the conspiracy, even when that association  
15 is coupled with the knowledge that a conspiracy is taking  
16 place. The mere fact that a defendant may have met with or  
17 knows others who engaged in criminal conduct does not prove  
18 that defendant's participation in a conspiracy. Similarly,  
19 mere presence at the scene of a crime, even when coupled with  
20 knowledge that a crime is taking place, is not sufficient to  
21 support a conviction. In other words, knowledge without  
22 agreement and participation, is not sufficient. In the context  
23 of this case, as I instructed you concerning knowledge and  
24 intent with respect to the substantive securities fraud, it is  
25 important to remind you that you cannot infer guilt based

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1 solely on the defendant's position in a corporate entity.

2 Similarly, the fact that a person, without knowledge  
3 that a crime is being committed, merely happens to act in a way  
4 that furthers either of the alleged purposes or objectives of  
5 the conspiracy, does not make that person a conspirator. What  
6 is necessary is that the defendant joined in the conspiracy  
7 with knowledge of its unlawful purposes and with an intent to  
8 aid in the accomplishment of one or more of its unlawful  
9 objectives.

10 In sum, the government must prove beyond a reasonable  
11 doubt that the defendant you are considering, with an  
12 understanding of the essential unlawful character of the  
13 conspiracy, that is, to commit securities fraud, intentionally  
14 engaged, advised or assisted in it for the purposes of  
15 furthering that illegal undertaking.

16 Once a conspiracy is formed, it is presumed to  
17 continue until either its objective is accomplished or there is  
18 some affirmative act of termination by the members. So too,  
19 once a person is found to be a member of a conspiracy, he is  
20 presumed to continue as a member in the conspiracy until a  
21 conspiracy is terminated or achieves its objective, unless it  
22 is shown by some affirmative proof that the person withdrew and  
23 disassociated himself from it.

24 The third element --

25 Are you all OK? It's late in the day, and it's a

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1 little warm in here. Does anybody want to stand and stretch or  
2 keep going?

3 OK. The third and final element of the conspiracy to  
4 commit securities fraud charged in Count One of the indictment  
5 is the requirement of an overt act. To sustain its burden of  
6 proof with respect to the conspiracy charged in the indictment,  
7 the government must show beyond a reasonable doubt that at  
8 least one overt act was committed in furtherance of that  
9 conspiracy by at least one of the coconspirators -- not  
10 necessarily a defendant -- in the Southern District of New  
11 York.

12 The purpose of the overt act requirement is clear.  
13 There must have been something more than mere agreement; some  
14 overt step or action must have been taken by at least one of  
15 the conspirators in furtherance of that conspiracy.

16 The overt acts are set forth in the indictment. The  
17 indictment alleges the following overt acts:

18 1. In approximately March 2014, John Galanis, a/k/a  
19 "Yanni," the defendant, met with employees of and advisors to  
20 the WLCC at a Native American economic development conference  
21 in Las Vegas, Nevada.

22 2. On or about July 21, 2014, Michelle Morton sent a  
23 text message to Jason Galanis stating, "should know how \$ [sic]  
24 we can proceed with bonds soon getting information. Jason  
25 Galanis responded, "I'm confident you will figure it out."

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1           3. On or about August 8, 2014, Hugh Dunkerley signed  
2 an agreement pursuant to which he bound the broker dealer at  
3 which he was employed to serve as the placement agent for the  
4 issue witness of bonds by the WLCC.

5           4. On or about August 22, 2014, Gary Hirst sent an  
6 e-mail containing trade tickets signed by him authorizing the  
7 purchase of certain bonds issued by the WLCC on behalf of  
8 certain clients of Hughes.

9           5. On or about October 1, 2014, Devon Archer, the  
10 defendant, called the transfer of \$15 million from a brokerage  
11 account located in New York, New York for the purchase of \$15  
12 million of bonds issued by the WLCC, which bonds were also  
13 held, for a period of time, in the brokerage account located in  
14 New York, New York.

15           6. On or about October 9, 2014, Bevan Cooney, the  
16 defendant, caused the transfer of \$5 million from an account in  
17 his name for the purchase of \$5 million bonds issued by the  
18 WLCC

19           For the government to satisfy the overt act  
20 requirement, it is not necessary for the government to prove  
21 all of the overt acts alleged in the indictment. And you may  
22 find that overt acts were committed which were not alleged in  
23 the indictment. The only requirement is that one of the  
24 members of the conspiracy -- not necessarily a defendant in  
25 this case -- has taken some step or action in furtherance of

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1 the conspiracy during the life of that conspiracy.

2 Let me put it colloquially. The overt act element is  
3 a requirement of the agreement went beyond the mere talking  
4 stage, the mere agreement stage. The requirement of an overt  
5 act is a requirement that some action be taken during the life  
6 of the conspiracy by one of the coconspirators to further that  
7 conspiracy.

8 You are further instructed that the overt act need not  
9 have been committed at precisely the time alleged in the  
10 indictment. It is sufficient if you are convinced beyond a  
11 reasonable doubt that it occurred at or about the time and  
12 place stated, as long as it occurred while the conspiracy was  
13 still in existence.

14 You should bear in mind that the overt act, standing  
15 alone, may be an innocent, lawful act.

16 But an apparently innocent act may shed its harmless  
17 character if it is a step in carrying out, promoting, aiding or  
18 assisting the conspiratorial scheme. You are therefore  
19 instructed that the overt act does not have to be an act which  
20 in and of itself is criminal or constitutes an object of the  
21 conspiracy.

22 Finally, you must find that an overt act was committed  
23 in the Southern District of New York. The Southern District of  
24 New York encompasses the following counties: New York County,  
25 (i.e., Manhattan), the Bronx, Westchester, Rockland, Putnam,



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1 Dutchess, Orange and Sullivan Counties. Anything that occurs  
2 in any of those places occurs in the Southern District of New  
3 York.

4 You will recall that I have admitted into evidence  
5 against the defendants the acts and statements of others  
6 because these acts and statements were committed or made by  
7 persons who, the government charges, were also coconspirators  
8 of the defendants.

9 The reason for allowing this evidence to be received  
10 against the defendants has to do in part with the nature of the  
11 crime of conspiracy. A conspiracy is often referred to as a  
12 partnership in crime: As in other types of partnerships, when  
13 people enter into a conspiracy to accomplish an unlawful end,  
14 each and every member becomes an agent for the other  
15 conspirators in carrying out the conspiracy.

16 Therefore, the reasonably foreseeable acts or  
17 statements of any member of the conspiracy, committed in  
18 furtherance of the common purpose of the conspiracy, are  
19 deemed, under the law, to be the acts or statements of all of  
20 the members, and all of the members are responsible for each  
21 acts or statements

22 If you find beyond a reasonable doubt that the  
23 defendant was a member of the conspiracy charged in the  
24 indictment, only reasonably foreseeable acts done, or  
25 statements made, in furtherance of the conspiracy by a person

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1 found by you to have been a member of the same conspiracy may  
2 be considered against that defendant. This is so even if such  
3 acts were committed or such statements were made in that  
4 defendant's absence, and without his knowledge.

5 However, before you may consider the acts or  
6 statements of a coconspirator in deciding the guilt of a  
7 defendant, you must first determine that the acts were  
8 committed or statements were made during the existence, and in  
9 furtherance, of the unlawful scheme. If the acts were done and  
10 the statements were made by someone whom you do not find to  
11 have been a member of the conspiracy, or if they were not made  
12 in furtherance of the conspiracy, they may not be considered by  
13 you in deciding whether a defendant is guilty or not guilty.

14 I have instructed you that the defendants, in various  
15 respects, must have acted knowingly in order to be convicted.  
16 This is true with respect to the objects of the conspiracy  
17 charged in Count One, as well as the substantive crime charged  
18 in Count Two. In determining whether a defendant acted  
19 knowingly with respect to the objectives of the conspiracy or  
20 the substantive crime, you may consider whether that defendant  
21 deliberately closed his eyes to what otherwise would have been  
22 obvious to him.

23 This is what the phrase "conscious avoidance" refers  
24 to. As I told you before, acts done knowingly must be a  
25 product of a person's conscious intention. They cannot be the

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1 result of carelessness, negligence or foolishness. But a  
2 person may not intentionally remain ignorant of a fact that is  
3 material and important to his conduct in order to escape the  
4 consequences of criminal law. We refer to this notion of  
5 intentionally blinding yourself to what is staring you in the  
6 face as conscious avoidance. An argument by the government of  
7 conscious avoidance is not a substitute for proof of knowledge;  
8 it is simply another factor that you, the jury, may consider in  
9 deciding what a defendant knew.

10 Therefore, if you find beyond a reasonable doubt that  
11 the defendant you are considering was aware that there was a  
12 high probability that a material fact was so, but that the  
13 defendant deliberately and consciously avoided confirming this  
14 fact, such as by purposely closing his eyes to it, or  
15 intentionally failing to investigate it, then you may treat  
16 this deliberate avoidance of positive knowledge as the  
17 equivalent of knowledge. However, guilty knowledge may not be  
18 established by demonstrating that the defendant was merely  
19 negligent, foolish or mistaken. Moreover, if you find that the  
20 defendant actually believed that the material fact was true, he  
21 may not be convicted. It is entirely up to you whether you  
22 find the defendant deliberately closed his eyes and any  
23 inferences to be drawn from the evidence on this issue.

24 With respect to the conspiracy charged in Count One,  
25 you must also keep in mind that there is an important

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1 difference between intentionally participating in the  
2 conspiracy, on the one hand, and knowing the specific object or  
3 objects of the conspiracy, on the other. You may consider  
4 conscious avoidance in deciding whether a defendant knew the  
5 objective or objectives of a conspiracy; that is, whether a  
6 defendant reasonably believed that there was a high probability  
7 that a goal of the conspiracy was to commit the crimes charged  
8 as objects of that conspiracy and deliberately avoided  
9 confirming that fact but participating in the conspiracy  
10 anyway. But conscious avoidance cannot be used as a substitute  
11 for finding that the defendant intentionally joined the  
12 conspiracy in the first place. It is logically impossible for  
13 a person to intend and agree to join a conspiracy if he does  
14 not know actually know it exists, and that is the distinction I  
15 am drawing. Similarly, with respect to the substantive  
16 securities fraud charged in Count Two, conscious avoidance can  
17 go only to knowledge and cannot be used as a substitute for  
18 finding that the defendant you are considering acted willfully  
19 or with an intent to defraud.

20 In sum, if you find that the defendant you are  
21 considering believed there was a high probability that a  
22 material fact was so and that the defendant deliberately and  
23 consciously avoided learning the truth of that material fact,  
24 you may find that the defendant acted knowingly with respect to  
25 that fact. However, if you find that the defendant actually

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1 believed the fact was not so, then you may not find that he  
2 acted knowingly with respect to that fact. You must judge from  
3 all the circumstances and all the proof whether the government  
4 did or did not satisfy its burden of proof beyond a reasonable  
5 doubt.

6 The government has offered evidence tending to show  
7 that on another occasion, John Galanis engaged in conduct  
8 similar to the charges in the indictment.

9 In that connection, let me remind you that John  
10 Galanis is not on trial for committing acts not alleged in the  
11 indictment. Accordingly, you may not consider this evidence of  
12 similar acts as a substitute for proof that John Galanis  
13 committed the crimes charged. Nor may you consider this  
14 evidence as proof that John Galanis has a criminal personality  
15 or bad character. The evidence of the other similar acts was  
16 admitted for a much more limited purpose, and you may consider  
17 it only for that limited purpose.

18 If you determine that John Galanis committed the acts  
19 charged in the indictment and the similar acts as well, then  
20 you may, but you need not draw, an inference that in doing the  
21 acts charged in the indictment, John Galanis acted knowingly  
22 and intentionally and not because of some mistake, accident or  
23 some other reasons.

24 Evidence of similar acts may not be considered by you  
25 for any other purpose. Specifically, you may not use this

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1 evidence to conclude that because John Galanis committed the  
2 other act or acts he must also have committed the acts charged  
3 in the indictment. Nor may you consider this evidence in any  
4 way against Mr. Archer or Mr. Cooney.

5 As we have proceeded through the indictment, you have  
6 noticed that it refers to a range of dates. I instruct you  
7 that it does not matter if a specific event alleged to have  
8 occurred on or about a certain date or month, but the testimony  
9 indicates that in fact it was a different date or month. The  
10 law requires only a substantial similarity between the dates  
11 and the months alleged in the indictment and the dates and  
12 months established by the evidence.

13 Now, in addition to dealing with the claims of each of  
14 the offenses, you must also consider the issue of venue as to  
15 each offense, namely, whether any act in furtherance of the  
16 unlawful activity occurred within the Southern District of New  
17 York. As I previously instructed you, the Southern District of  
18 New York encompasses the following counties: New York County,  
19 (i.e. Manhattan), the Bronx, Westchester, Rockland, Putnam,  
20 Dutchess, Orange and Sullivan Counties. Anything that occurs  
21 in any of those places occurs in the Southern District of New  
22 York.

23 It is sufficient to satisfy the venue requirement if  
24 any act by anyone in furtherance of the crime charged occurred  
25 within the Southern District of New York. To satisfy this

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1 venue requirement only, the government need not meet the burden  
2 of proof beyond a reasonable doubt. It need not meet that  
3 standard on the venue requirement and the venue requirement  
4 only. The government meets its burden of proof if it  
5 establishes by a preponderance of the evidence -- simply tips  
6 the scale in its favor -- that an act in furtherance of the  
7 crime occurred within the Southern District of New York. A  
8 preponderance of the evidence means that something is more  
9 likely than not.

10 So now I'm going to go through the last section of the  
11 jury charge, and that deals with the deliberations of the jury.

12 So, ladies and gentlemen of the jury, that concludes  
13 the substantive portion of my instructions to you. You are  
14 about to go into the jury room and begin your deliberations.  
15 More than likely you will begin them tomorrow morning. I will  
16 back all of the exhibits to the jury room, but feel free to ask  
17 for any items as well, including any exhibits you may have  
18 trouble locating, and those that are not in hard copy, such as  
19 audio or video recording, which we can replay for you in the  
20 courtroom. If you want any of the testimony read back, you may  
21 also request that. Please remember that it is not always easy  
22 to locate what you might want, so be as specific as you  
23 possibly can in requesting exhibits or portions of the  
24 testimony. If you want any further explanations of the law as  
25 I have explained it to you, you may also request that.

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1           Your requests for exhibits or testimony -- in fact any  
2       communications with the Court -- should be made to me in  
3       writing, signed, dated, and timed by a foreperson that you will  
4       choose, and given to one of the court security officers. I  
5       will respond to any questions or requests you have as promptly  
6       as possible, either in writing or by having you return to the  
7       courtroom so I can speak to you in person. In any  
8       communication, please don't tell me or anyone else how the jury  
9       stands on any issue until after a unanimous verdict is reached  
10      and announced in open court by your foreperson.

11           If any of have you taken notes during the course of  
12      this trial, I want to emphasize to you as you are about to  
13      begin your deliberations that notes are simply an aid to your  
14      memory. Notes that any of you may have made may not be given  
15      any greater weight or influence than the recollections or  
16      impressions of other jurors, whether from notes or memory, with  
17      respect to the evidence presented or what conclusions, if any,  
18      should be drawn from such evidence. All jurors' recollections  
19      are equal. If you can't agree on what you remember the  
20      testimony was, you can ask to have the transcript read back.

21           Although during your deliberations you may discuss the  
22      case with your fellow jurors, you must not communicate with or  
23      provide any information to anyone else by any means. You may  
24      not thus use any electronic devices or media, such as  
25      telephone, cell phone, smart phone, iPhone, BlackBerry, or



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1 computer, the Internet, or any Internet service, or any text or  
2 instant messaging service, or any Internet chat room, blog, or  
3 website, such as Facebook, Snap Chat, YouTube or Twitter, to  
4 communicate with anyone any information about this case or to  
5 conduct any research about this case until I accept your  
6 verdict.

7 Momentarily, you will retire to decide the case. Your  
8 function is to weigh the evidence in this case and to determine  
9 the guilt or lack of guilt of each defendant with respect to  
10 each count charged in the indictment. You must base your  
11 verdict solely on the evidence or lack of evidence and these  
12 instructions as to the law, and you are obligated on your oath  
13 as jurors to follow the law as I instruct you, whether you  
14 agree or disagree with the particular law in question.

15 It is your duty as jurors to consult with one another  
16 and to deliberate with a view toward reaching an agreement.  
17 Each of you must decide the case for himself or herself, but  
18 you should do so only after a consideration of the case with  
19 your fellow jurors, and you should not hesitate to change an  
20 opinion when convinced that it is erroneous. Discuss and weigh  
21 your respective opinions dispassionately, without regard to  
22 sympathy, and without regard to prejudice or favor for either  
23 party, and adopt that conclusion which in your good conscience  
24 appears to be in accordance with the truth. You are not to  
25 discuss the case until all jurors are present. So if you get

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1 there in the morning, you can't start talking about it until  
2 everybody is there. Nine or ten or even 11 jurors together is  
3 only a gathering of individuals. Only when all jurors are  
4 present do you constitute a jury, and only then may you  
5 deliberate.

6 The verdict must represent the considered judgment of  
7 each juror. In order to return a verdict, it is necessary that  
8 each juror agree to the verdict. Your verdict must be  
9 unanimous. However, you are not bound to surrender your honest  
10 convictions concerning the effect or weight of the evidence for  
11 the mere purpose of returning a verdict or solely because of  
12 the opinion of other jurors. Each of you must make your own  
13 decision about the proper outcome of this case based on your  
14 consideration of the evidence and your discussions with your  
15 fellow jurors. No juror should surrender his or her  
16 conscientious beliefs solely for the purpose of returning a  
17 unanimous verdict.

18 Remember at all times, you are not partisans. You are  
19 judges, judges of the facts. Your sole interest is to seek the  
20 truth from the evidence in the case.

21 If you are divided, do not report how the vote stands  
22 and, if you have reached a verdict, do not report what it is  
23 until you are asked in open court.

24 I referred a moment ago to a foreperson. You should  
25 by your own vote select one of you to sit as a foreperson. The

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1 foreperson doesn't have any more power or authority than any  
2 other juror, and his or her vote doesn't count for any more  
3 than any other juror's vote or opinion. The foreperson is  
4 merely your spokesperson to the court. He or she will send out  
5 any notes, and sign them and date them and time then. And when  
6 the jury has reached a verdict, he or she will notify the court  
7 security officer or marshal that the jury has reached a  
8 verdict, and you will come into open court and give the  
9 verdict.

10 After you have reached a verdict, you will fill out a  
11 form that will be given to you, a verdict form. You will sign  
12 it and date it, and advise the marshal or court security  
13 officer outside your door that you are ready to return to the  
14 courtroom. The verdict form lists the questions that you must  
15 resolve based on the evidence and the instructions that I have  
16 given you. When the form is complete, it will be marked as a  
17 court exhibit.

18 I will stress that each of you must be in agreement  
19 with the verdict which is announced in open court. Once your  
20 verdict is announced by your foreperson in open court and  
21 officially recorded, it cannot ordinarily be revoked.

22 So, at this time, the first 12 jurors first thing in  
23 the morning will begin their deliberations in the case. In  
24 light of the scheduling conflicts, however, Juror 7, that's  
25 Mr. Miller, and alternate number 1, so it's Juror 13,

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1 Ms. Sanchez, I understand that you are both going to be away  
2 all of next week, and you are not available on Friday, so we're  
3 actually going to make you alternates numbers 3 and 4. And  
4 Mr. Grippi, you are going to become Juror 7. All right? Is  
5 that clear to everyone?

6 So for the alternates, you won't deliberate at this  
7 time, but the alternates are not quite excused. While the jury  
8 conducts its deliberations, you don't have to come to court,  
9 but you should give Ms. Cavale your phone numbers where you can  
10 be reached, because it is possible and it sometimes happens  
11 that one or more of you could be needed to deliberate if one of  
12 the 12 jurors is unable to continue. Ms. Cavale will call you  
13 when deliberations are completed so that you know that you are  
14 completely finished.

15 Between now and then, you must continue to observe all  
16 the restrictions I have instructed you on throughout the trial.  
17 That is, you must not discuss this case with anyone, including  
18 your fellow alternate jurors, the other jurors, any other  
19 people involved in the trial, members of your family, friends,  
20 coworkers, anyone else. And until a verdict is reached, as I  
21 have already instructed, you may not communicate with anyone  
22 about the case in any way. If anyone approaches you and tried  
23 to talk to you about the case, please report that to me through  
24 Ms. Cavale immediately.

25 Do not listen to or watch or read any news reports

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Charge

1 concerning this trial if there were to be any; don't do any  
2 research on the Internet or otherwise; don't visit any of the  
3 places mentioned during the trial or conduct any investigation  
4 of your own, including on social media. The reason for this of  
5 course is that should you be asked to participate in reaching a  
6 verdict in this case, the only information you will be allowed  
7 to consider is what you learned in this courtroom during this  
8 trial.

9 I'm sorry to the alternate jurors, you will likely  
10 miss the experience of deliberating with the jury but the law  
11 provides for a jury of 12 persons in this case. So before the  
12 rest of the jury retires to the jury room, if you have any  
13 clothing or objects that you want to pick up, and you're going  
14 to be asked to withdraw without discussing the case. You can  
15 say your goodbyes to your fellow jurors, and I'm going to come  
16 thank you personally as well.

17 So, members of the jury, that concludes my  
18 instructions to you. Remember that your verdict must be  
19 rendered without fear, without favor, and without prejudice or  
20 sympathy. I am sure that if you listen to the views of your  
21 fellow jurors and apply your own common sense, you will reach a  
22 fair verdict.

23 Right now I'm just going to ask you to stay seated or  
24 stand and stretch for one minute while I speak to the lawyers.  
25 And then we will swear in the marshal and excuse you for the

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Charge

night.

(Continued on next page)

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Charge

1 (At the side bar)

2 THE COURT: Is there anything that needs to be  
3 corrected, anything additional?

4 MR. QUIGLEY: Just the language about the indictment  
5 going back.

6 THE COURT: But I think I corrected that on the fly,  
7 so I don't think I need to fix that. I don't think I need to  
8 reprint everything, do you?

9 MR. SCHWARTZ: No.

10 THE COURT: All right. So I'm going to send the jury  
11 to deliberate.

12 MS. MERMELSTEIN: How will we know what time they're  
13 coming tomorrow?

14 THE COURT: I'm going to ask them to send us a note  
15 today and tell us what schedule they would like to set.

16 (Continued on next page)

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Charge

1 (In open court)

2 THE COURT: So, as I said, momentarily I'm going to  
3 send you into the jury room to begin your deliberations. And I  
4 will send in the jury charge. I will send in one copy of the  
5 verdict form. We will be sending all of the exhibits back, as  
6 I mentioned.

7 I will note that Ms. Cavale has been dealing with you  
8 during the course of the trial. During your deliberations,  
9 however, you will not have any contact with her. Any contact  
10 with the court must be made through the marshal or court  
11 security officer by note, by written note. So, we will now  
12 swear in the marshal to protect you during the course of these  
13 deliberations.

14 (Marshal sworn)

15 THE COURT: I'm going to excuse you for the evening.  
16 I'm going to just walk back and thank the alternate jurors --  
17 to the extent I don't see you in the future -- thank you for  
18 your time.

19 The one thing I'm going to ask you to do before you  
20 leave tonight is just agree on a schedule going forward just  
21 for purposes of today and tomorrow. I assume you want to go  
22 home now, but just let me know what time you plan to be here in  
23 the morning so that we can be sure to be here as well.

24 And then I'm going to ask you to do the same thing  
25 tomorrow if there is a particular time, if you want to sit



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Charge

1 until five, or six, or earlier, just send us a note and let us  
2 know so that we know what your schedule is going to be. OK?  
3 And with that, thank you for your patience, and you are  
4 directed to begin your deliberations.

5 (Jury retires for the evening)

6 (Trial adjourned to June 28, 2018 at 9:00 a.m.)